

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 06-05

AN ORDINANCE APPROVING SENSITIVE LANDS REVIEW SLR2004-00003 AND SLR 2006-00001, TREE REMOVAL TRE2006-00001 THROUGH 2006-00009, AND COMPREHENSIVE PLAN AMENDMENT CPA2004-00001 TO REMOVE GOAL 5 PROTECTION FROM THE RESOURCES TO BE IMPACTED BY CONSTRUCTION OF SW WALL STREET AND TO ADD NEWLY CREATED AND RESTORED WETLAND AND RIPARIAN RESOURCES TO THE INVENTORY OF LOCALLY SIGNIFICANT SITES.

WHEREAS, Section 18.775.070 of the City of Tigard Community Development Code requires a sensitive lands permit for development within drainageways and wetlands, and approval criteria are presented in Sections 18.775.070.D-18.775.070.E.

WHEREAS, Section 18.790.050 of the Community Development Code requires a tree removal permit for the removal of any tree which is located on or in a sensitive lands area, and approval criteria are presented in Sections 18.790.050.A.

WHEREAS, Section 18.775.090 of the Community Development Code establishes special provisions for development within Locally Significant wetland and riparian corridors to address the requirements of Statewide Planning Goal 5 and its safe harbor provisions; and

WHEREAS, the proposed construction of the 360 foot section of SW Wall Street, east of Hall Boulevard, will impact sensitive drainageways and wetlands, will require removal of trees within sensitive lands and will impact Goal 5 resources designated as Locally Significant; and

WHEREAS, pursuant to Section 18.775.130 of the Tigard Development Code, any owner of property affected by Goal 5 safe harbor protection of significant wetlands and/or vegetated areas may apply for a quasi-judicial Comprehensive Plan Amendment under Type IV procedure; and

WHEREAS, pursuant to Section 18.380.030 of the Tigard Development Code, the Tigard Planning Commission shall make a recommendation to the Tigard City Council on an application for a quasi-judicial comprehensive plan amendment; and

WHEREAS, pursuant to Section 18.390.060G of the Tigard Development Code, a Type IV decision shall be based on consideration of Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes; any federal or state statutes or regulations found applicable; any applicable METRO regulations; any applicable comprehensive plan policies; and, any applicable provisions of the City's implementing ordinances; and

WHEREAS, the Comprehensive Plan Amendment must be based on a specific development proposal and may be justified by either conducting an Environmental, Social, Economic and Energy (ESEE)

analysis or demonstrating the site no longer meets the applicable significance defined by the Goal 5 administrative rule; and

WHEREAS, the City of Tigard, acting as the applicant, has requested concurrent review of the sensitive lands permit, tree removal permit, and a quasi-judicial Comprehensive Plan Amendment for proposed construction of the 360 foot section of SW Wall Street; and

WHEREAS, the applicant has submitted a specific development proposal, and conducted an Environmental, Social, Economic and Energy (ESEE) analysis demonstrating justification for amending the Comprehensive Plan; and

WHEREAS, the effect of the Comprehensive Plan Amendment shall be to remove Goal 5 protection from the locally significant resources to be impacted by construction of SW Wall Street as shown in Exhibit "A" (Area 1); and

WHEREAS, the applicant has submitted plans for compensatory wetland, vegetated corridor and tree mitigation, and the newly created and restored wetland and riparian resources will be added to the inventory of locally significant sites as shown in Exhibit "A" (Area 2); and

WHEREAS, the Tigard Planning Commission held a public hearing on April 3, 2006, and recommended approval of CPA2004-00001, SLR2004-00003 and SLR 2006-00001, and TRE2006-00001 through 2006-00009 by motion with a unanimous vote in favor; and

WHEREAS, the Tigard City Council held a public hearing on May 9, 2006, to consider the request for sensitive lands permit, tree removal permit and a quasi-judicial Comprehensive Plan Amendment based on the specific development proposal for construction of SW Wall Street and testimony provided at the hearing and determined that the construction of SW Wall Street will not adversely affect the health, safety and welfare of the City and meets all applicable review criteria.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Sensitive Lands Review SLR2004-00003 and SLR 2006-00001, Tree Removal TRE2006-00001 through 2006-00009, and Comprehensive Plan Amendment CPA2004-00001 for the construction of the 360 foot section of SW Wall Street are hereby approved by the City Council.

SECTION 2: The map of locally significant wetlands and riparian corridors created to address Goal 5 safe harbor provisions shall be amended to represent the removal of the significant resources impacted by construction of SW Wall Street as shown in Exhibit "A".

SECTION 3: Newly created and restored wetlands and riparian resources shall be added to the inventory of protected locally significant resources as shown in Exhibit "A".

SECTION 4: The Tigard City Council adopts the City of Tigard Staff Report dated April 3, 2006, the "Addendum to the Staff Report" dated April 25, 2006, and the letter prepared by Group Mackenzie, Inc. (dated April 17, 2006) in response to submitted public comments as findings in support of this decision; copies are attached hereto as Exhibit "B", Exhibit "C" and Exhibit "D" respectively and are incorporated herein by reference.

SECTION 5: The Tigard City Council adopts the conditions of approval as stated on page 2 of the City of Tigard Staff Report dated April 3, 2006; a copy is attached hereto as Exhibit "B" and incorporated herein by reference.

SECTION 6: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By majority vote of all Council members present after being read by number and title only, this 9th day of May, 2006.

Catherine Wheatley
Catherine Wheatley, City Recorder

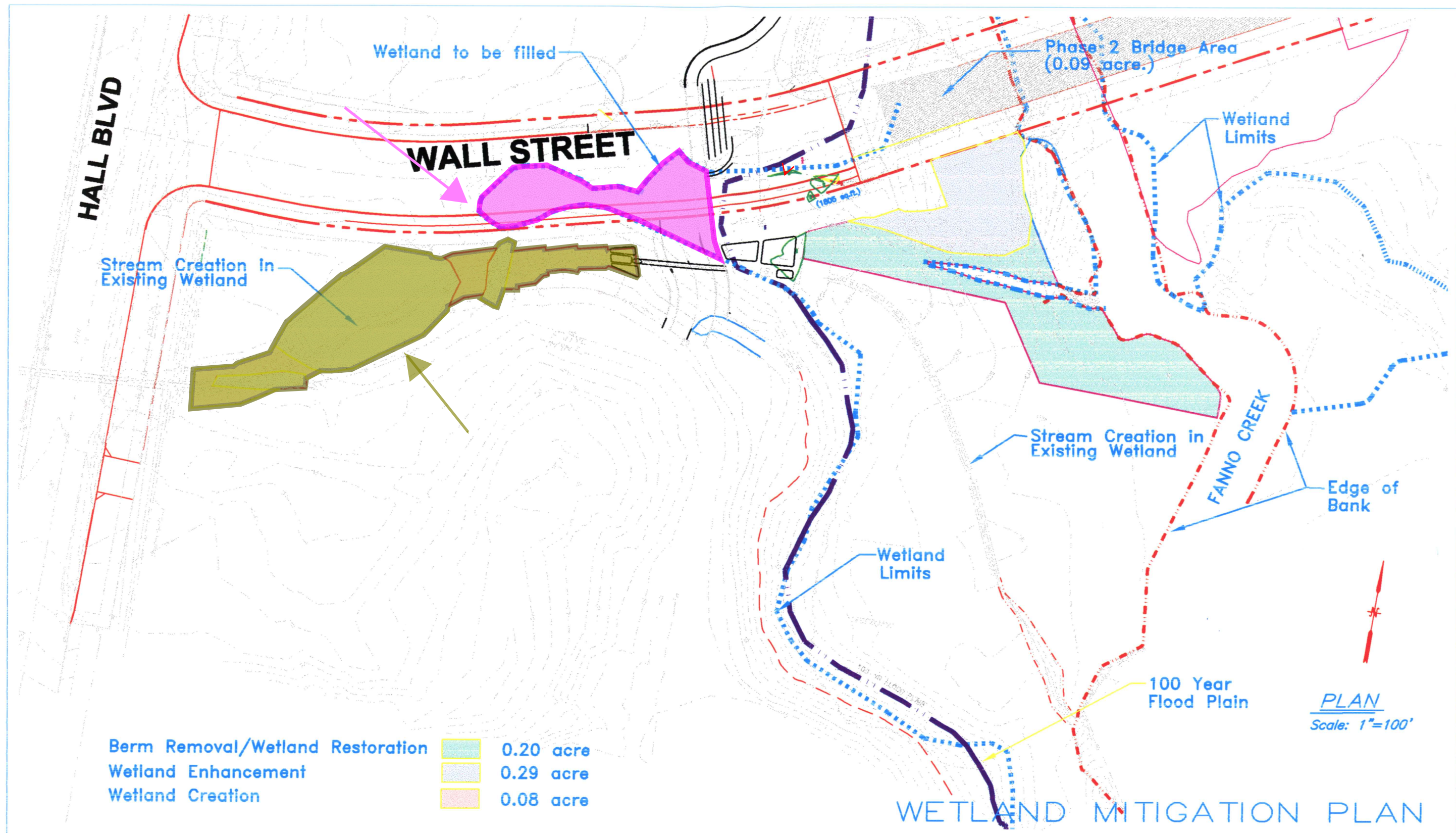
APPROVED: By Tigard City Council this 9th day of May, 2006.


Craig Dirksen
Craig Dirksen, Mayor

Approved as to form:

Kerry Fickore
City Attorney

5/09/06
Date



DATE	REVISION	NO.	BY	DESIGNED BY:	<div>Exp. 12/31/03</div> <div></div> <div> DEDAAS & Associates, Inc. Consulting Engineers & Surveyors</div> <div>Suite 300 - AGC Center 8400 S.W. Commercial Circle Milwaukie, Oregon 97127</div> <div> CITY OF TIGARD ENGINEERING DEPARTMENT</div>	<div>WALL STREET EXTENSION (PH. 1)</div> <div>STREET & UTILITIES IMPROVEMENTS</div> <div>x</div>	SHEET	
			DRAWN BY: LM	<div>PHONE: (503) 682-2450</div> <div>FAX: 682-4018</div>				<div>OF</div>
			CHECKED BY: TKA					
			DATE:					
			SCALE: AS SHOWN					
FILE LOCATION:				PROJECT NO. 02.629.118	DATE DECEMBER, 2004	FILE 02.629.118		

STAFF REPORT TO THE PLANNING COMMISSION FOR THE CITY OF TIGARD, OREGON



120 DAYS = N/A

SECTION I. APPLICATION SUMMARY

FILE NAME:	WALL STREET EXTENSION		
CASE NOS:	Comprehensive Plan Amendment (CPA)	CPA2004-00001	
	Sensitive Lands Review (SLR)	SLR2004-00003	
	Sensitive Lands Review (SLR)	SLR2006-00001	
	Tree Removal (TRE)	TRE2006-00001 through 2006-00009	
APPLICANT:	City of Tigard Capital Improvement Div. Attn: Vannie Nguyen 13125 SW Hall Boulevard Tigard, OR 97223	APPLICANT'S REP:	Group Mackenzie Attn: Geraldene Moyle, AICP 0690 SW Bancroft Portland, OR 97239
PROPOSAL:	<p>As part of a capital improvement project, the applicant is requesting Sensitive Lands approval to build a 350-foot extension of SW Wall Street, east of Hall Blvd, between the Tigard Public Library and Fanno Pointe Condominiums. As part of this extension, the Pinebrook Creek wetlands designated as locally significant will be impacted and reconfigured. In order to carry out this project, a Comprehensive Plan Amendment is required. The effect of the amendment would be to remove Goal 5 protection from the wetlands impacted by this specific development proposal, but not to remove the requirements related to the CWS Stormwater Connection Permit. A Sensitive Lands Review is also required for impacts to wetlands and drainageways and the proposed reconfiguration of Pinebrook Creek, a tributary to Fanno Creek. A Tree Removal Permit is required for a number of trees to be removed in the sensitive land areas in order to accommodate the grading and construction of the roadway. The applicant has requested concurrent review of all these permit applications.</p> <p>Phase I of the SW Wall Street extension is aimed at providing a joint access to both the Tigard Public Library and the Fanno Pointe Condos to satisfy obligations to the Oregon Department of Transportation (ODOT) which allowed temporary access to the condos and library from Hall Boulevard. This 350 foot improvement will terminate on the west side of Fanno Creek and west of its 100-year floodplain. Any future extensions of SW Wall Street across Fanno Creek would require a separate review and approval by the City, State and Federal agencies.</p>		
LOCATION:	SW Wall Street unimproved right-of-way, east of SW Hall Boulevard, south of the Tigard Public Library, and north of the Fanno Pointe Condominiums; Washington County Tax Assessor's Map 2S102DD, Tax Lots 200, 300 and 90000.		
ZONING:	R-12: Medium-Density Residential District. The R-12 zoning district is designed to accommodate a full range of housing types at a minimum lot size of 3,050 square feet. A wide range of civic and institutional uses are also permitted conditionally.		

COMP PLAN: Medium-Density Residential and Open Space.

**APPLICABLE
REVIEW**

CRITERIA: Community Development Code (TDC) Chapters 18.380, 18.385, 18.390, 18.510, 18.725, 18.775, 18.790, 18.795 & 18.810. Comprehensive Plan policies 2, 3, 4, 7 & 8.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Planning Commission find that this request for Comprehensive Plan Amendment, Sensitive Lands Permit and the Tree Removal Permit will not adversely affect the health, safety and welfare of the City and meets the necessary approval criteria. Staff recommends APPROVAL, subject to the following recommended Conditions of Approval.

**THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED
PRIOR TO COMMENCEMENT OF ANY SITE WORK**

- The applicant shall finalize a maintenance agreement with the Fanno Pointe Condominium Owners Association for the maintenance to the mitigation site on the Fanno Pointe Condo property and submit the agreement prior to commencement of any site work.

**THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED
DURING THE PROJECT CONSTRUCTION**

- The applicant shall comply with the conditions made by the Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers in carrying out the wetland mitigation plan. The project will additionally meet the erosion control and water quality conditions contained in the DSL and Corps of Engineers wetland permits and in the water quality certification issued by the Department of Environmental Quality as part of the Corps of Engineers permit. Submit the monitoring report to be prepared for the Oregon DSL and the US Army Corps to the City of Tigard upon completion of the project showing success meeting the permit conditions.
- The applicant shall comply with the conditions made by Clean Water Services in carrying out the vegetated corridor mitigation plan. Submit a monitoring report upon completion of the project showing success meeting the permit conditions.
- In carrying out the tree removal plan, any non-native trees shall be girdled and left as snags rather than removed to provide habitat in areas where there are no safety issues.

SECTION III. BACKGROUND INFORMATION

Project History

The construction of Wall Street has a long history, and to understand the need for this project, a number of considerations require explanation. First, the primary purpose of Phase one of the Wall Street extension is to provide access to the Tigard Library and the Fanno Pointe Condominiums. However, potential subsequent phases would extend SW Wall Street further eastward connecting Hall Boulevard to Hunziker Street as identified in the Transportation System Plan (TSP), a subdocument to the City's Comprehensive Plan. The TSP was adopted by resolution 02-33, and became effective on October 10, 2002. The TSP lays out the City's Transportation improvement needs over a 20-year planning period. In the document, existing and projected deficiencies are identified with corresponding improvement projects

and techniques to alleviate congestion and improve transportation efficiency. Figure 8-12 of the TSP, on page 8-23 identifies local street connectivity needs including the Wall Street connection between SW Hall and SW Hunziker Streets. The extension appears again on Figure 8-19, page 8-45, for the Street Improvement Plan. These improvements and connections are part of a comprehensive set of tools to alleviate and mitigate for growing congestion problems throughout the City. No single project identified in the TSP will alleviate the traffic issues the city faces.

The proposed road is classified as a collector which is described in the TSP as providing “both access and circulation within and between residential and commercial/industrial areas. Collectors differ from arterials in that they provide more of a citywide circulation function, do not require as extensive control of access (compared to arterials) and penetrate residential neighborhoods, distributing trips from the neighborhood and local street system.” However, there is an inherent conflict in the Comprehensive Plan as policy 12.3.1 also identifies that development of industrial sites (the undeveloped land on the east side of Fanno Creek) shall not channel traffic through residential areas (the R-12 zoned Fanno Pointe and Library). This issue is not ripe for discussion as part of this proposal as the street will not be extended to the industrial land as part of phase 1, and no specific development is being proposed for the industrial land at this time.

In January of 2003, a private developer received approval to construct a 42 unit condominium project adjacent to Hall Boulevard known as Fanno Pointe Condominiums. During the review of that project, staff received comments from the Tualatin Riverkeepers who initially opposed the project, but following some site plan revisions had indicated their support. The staff report goes on to note: “The group also asked that the existing pond and drainage stream be revised. It is expected that those improvements will be made when the City of Tigard constructs the future Wall Street extension along the northern boundary of the subject site.” The following discussion regarding the future Wall Street was included in the original report for the Fanno Pointe Condo’s:

Because the timing of the Library project will likely lag behind this project, the applicant will need an interim access onto Hall Boulevard to support the development. Their ultimate access will come from Wall Street, which will be constructed in part by the City. The City and the applicant have discussed the need for an interim access onto Hall Boulevard with ODOT, and ODOT has agreed to allow the access in the location shown on the applicant’s plans...Therefore, the interim access onto Hall Boulevard may be able to be completely removed once the Wall Street access is constructed...

Wall Street

This roadway is classified as a three-lane collector street that will eventually connect between Hall Boulevard and Hunziker Street to the east. In order to connect to Hunziker Street, a crossing of the railroad ROW will be needed. That approval has not yet been obtained. However, the street can be extended from Hall Boulevard to a point where access can be provided to both the Library and Fanno Pointe. Access points for the two projects will align across from each other.”¹

In April of 2003, the City received approval to construct the Tigard Public Library. A number of road improvements were required as part of that decision, including frontage improvements on Hall Boulevard, as well as completion of the first phase extension of Wall Street. An interim driveway was provided to allow access until such time that the Wall Street Phase 1 could be completed. The following discussion was included in the original report for the library:

SW Wall Street

Wall Street is classified as a three-lane collector street with bike lanes. It is to provide an ultimate connection between Hall Boulevard and Hunziker Street to the east. A 70-foot ROW width is required for this street. The applicant plans to dedicate ROW for Wall Street as a part of this project. The applicant should only dedicate this ROW if the Wall Street LID project is approved in the proposed location.

A preliminary alignment study was conducted by the City to determine how and where this street would need

¹ Case file number SDR2002-00012, p.24

to cross Fanno Creek and the railroad ROW to the east. Four options were considered, with the location near the southern border of this site being the finalist. The other options that were considered resulted in more impact to Fanno Creek and the associated wetland areas adjacent to the creek.

If the City obtains approval to construct this roadway, the construction would be in phases, with the first phase simply providing a full-width improvement from Hall Boulevard a distance of approximately 475 feet to a point where access into the library site and the Fanno Pointe site can be achieved. This first phase can be constructed without impacts to Fanno Creek or the railroad. A separate effort to deal with the creek and railroad crossing will continue beyond the scope of the library project.

As was stated previously, the construction of Wall Street is proposed in two phases, with the first phase being a segment beginning from Hall Boulevard and funded partly by the City and partly from TIF funds, and the second phase being a LID. The Wall Street project is not part of the library project. The library project can be served alone by the driveway configuration shown on the plan. This configuration will accommodate the future construction of the first phase of Wall Street, should it be approved in the location desired by the City. Should the Wall Street project be delayed, the library project can move forward with the driveway plan as shown. This provision has also been discussed with ODOT.”²

On March 23, 2004, the City submitted its proposal for sensitive lands review and a comprehensive plan amendment to construct Phase 1 and receive approval for the future construction of Phase 2 of the Wall Street extension. At that time, the applicant had not received approval from Clean Water Services, or the Army Corps of Engineers. Moreover, approval had not been obtained from Southern Pacific Railroad for an at-grade crossing either. The application remained on hold until these approvals could be obtained. In the interim staff held several meetings with the applicant to discuss this project on September 15, December 16 and 22, and again on January 12, 2005. As a result of those meetings, the applicant revised the application to eliminate seeking approval for Phase 2.

In the Fall of 2005, the original proposal for Phase 1 was further revised to minimize the impact to sensitive land areas and meet local planning requirements. As a result, the length of the proposed roadway was reduced from 425 feet to 350 feet in order to avoid development within the 100-year floodplain by shifting the library and condominium accessways to the west. The redesign includes a retaining wall along the eastern edge of the condominium access to minimize the amount of wetland impact. The total wetland impact area for Phase 1 was reduced from 0.25 acre to 0.11 acre.

Vicinity Information

The area of impact is east of SW Hall Boulevard, and directly between the Tigard Public Library and the Fanno Pointe Condominiums west of Fanno Creek. The zoning in this area is R-12 Medium Density Residential. Parcels on the opposite side of Fanno Creek are designated as Light Industrial. To the west of the project is R-4.5, low density residential zoning.

Proposal Description

Normally, a comprehensive plan amendment would be heard separately, with development permit applications following final outcome of the comprehensive plan amendment. However, in the case of an amendment to remove Goal 5 protection, the development code requires it to be “based on a specific development proposal”. This detail is necessary to determine the extent of the proposed impacts, and to what degree the impacts have been or could be further minimized. For this proposal, at the request of the applicant, the subsequent permit activities are to be heard concurrently with the comprehensive plan amendment. This will give decisionmakers a better idea of the full extent of the proposal and gives the applicant better assurance of feasibly completing the project after issues surrounding the comprehensive plan amendment are decided. This consolidated request adds complexity to the application that will be addressed

² Case file number CUP2003-00001, p.29

fully in the subsequent analysis.

Phase 1 of the Wall Street extension will provide a 350 foot section of roadway. The right-of-way (ROW) is 72 feet wide with 3-lanes meeting the standards for designated Collector streets and additional widths of up to 20 feet outside the ROW to accommodate 8-foot-wide public utility easements and cut and fill slopes.. This first phase encompasses the intersection with SW Hall Boulevard to driveways serving the Tigard Library on the north, and the Fanno Pointe Condos on the south. Future phases of Wall Street are planned to continue across Fanno Creek and the railroad tracks to an ultimate connection with SW Hunziker Avenue, to provide additional east-west connectivity for the eastern area of Tigard between from Hall Blvd. to 72nd Avenue between Hunziker Street and Bonita Road or north-south connections from Hunziker Street to Bonita Road between Hall Boulevard and 72nd Avenue. However, this application is only for the 350-foot extension to serve the Tigard Library and the Fanno Pointe Condos.

Locally Significant Wetland

This first phase encroaches into wetlands and vegetated corridor that are shown on the “Wetland and Streams Corridor Map” as “Locally Significant”. An area of approximately 0.11 acres (4,792 s.f.) will be impacted by filling slopes and road construction. The criteria for these wetlands generally prohibit any permanent impacts, with few exceptions. To remove this protection from these wetlands, they must be removed from the inventory by a comprehensive plan amendment, a Type IV procedure. Impacts to the wetland will be mitigated with stream channel and wetland creation (0.08 acres), wetland enhancement (0.29 acres) and wetland restoration (0.20 acre). The stream channel and adjacent wetlands will be reconstructed slightly south of their existing location .

Drainageway

The wetlands are associated with Pinebrook Creek, a tributary to Fanno Creek that originates to the southwest along SW McDonald Street, ultimately crossing Hall Boulevard where it is currently culverted twice in culverts not designated for fish passage and meanders through the Fanno Pointe site. According to the Biological Assessment prepared by Fishman Environmental Services, Pinebrook Creek “appears to consist of two to three narrow (approximately 6 inch) shallow meandering channels without a visible main stream channel” and is impassible at its confluence with Fanno Creek. Approximately 270 linear feet of this channel will be replaced by a reconstructed channel, approximately 550 feet in length, which will also remove two existing culverts that do not allow fish passage (totaling approximately 170 feet in length). The area of vegetated corridor impacted by the proposed improvements totals 18,429 sf (0.42 acres). The proposed vegetated corridor impacts are summarized in the file (Attachment 11, Figure 1). The relocated Pinebrook Creek will be connected to an historic channel which will flow to the confluence with Fanno Creek. Only one culvert, under the driveway serving Fanno Pointe, will be required. This new culvert will meet ODF&W fish passage requirements providing fish passage for cutthroat trout and juvenile steelhead during high stream flows of Fanno Creek. The current confluence does not allow fish passage since there is presently an approximate eight foot drop in elevation from the downstream edge of the East Pond to Fanno Creek.

Floodplain

The proposed road improvement is not located within the 100-year floodplain. The watermain extension included in the roadway does not extend into the 100-year floodplain and its elevation is above the floodplain to preclude floodwater from infiltrating into the water system. Portions of the stream restoration and plantings will be located within the floodplain. However per Section 18.775.020 C2, stream and wetland restoration and enhancement programs performed under the direction of the City are exempt from the sensitive lands provisions.

Tree Removal

Although a plan for tree planting, removal and protection is not required for a comprehensive plan amendment, the applicant has submitted a Tree Plan (Attachment 9c) prepared by a registered consulting arborist. Within the project impact area, including areas where restoration is to occur, are a total of 44 trees that are 6 inches or greater in caliper size. The applicant is proposing to remove 19 trees greater than 6 inches in diameter. Of the total, 15 trees will be saved and 10 trees have been identified as dead or hazardous (not requiring a permit for removal). However, the applicant is proposing to remove 12 existing trees from sensitive lands area, which requires a tree removal permit.

The number of trees that are greater than 12 inches diameter total 18 trees. Nine of these trees (50%) are proposed for removal. The total number of caliper inches represented by this removal is 182 caliper inches. The amount of mitigation required is based on 50 percent of the total caliper inches removed, which equals 91 caliper inches. The applicant's planting plan proposes to replant 336 caliper inches versus the 91 inches required to be mitigated.

SECTION IV SUMMARY OF REPORT

❖ Applicable criteria, findings and conclusions

- Tigard Development Code
 - 18.380 Zoning Map and Text Amendments
 - 18.385 Miscellaneous Permits
 - 18.390 Decision Making Procedures
 - 18.510 Residential Zoning Districts
 - 18.725 Environmental Performance Standards
 - 18.775 Sensitive Lands Review
 - 18.790 Tree Removal
 - 18.795 Vision Clearance Areas
 - 18.810 Street and Utility Improvement Standards
- Applicable Comprehensive Plan Policies
- Applicable Metro Standards
- Statewide Planning Goals

❖ City Department and outside agency comments

SECTION V. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

Chapter 18.380. Zoning Map and Text Amendments:

Chapter 18.380.030

A. Quasi-judicial amendments. 2. The Commission shall make a recommendation to the Council on an application for a comprehensive plan map amendment.

The applicant has requested a quasi-judicial comprehensive plan amendment under Type IV procedure to remove Goal 5 protection from the site as provided in TDC 18.775.130. The Commission shall make recommendations to the Council on this proposed comprehensive plan amendment.

B. Standards for making quasi-judicial decisions. A recommendation or decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following standards:

1. Demonstration of compliance with all applicable comprehensive plan policies and map designations;

Staff will address the applicable comprehensive plan policies, later in this report.

2. Demonstration of compliance with all applicable standards of any provision of this code or

applicable implementing ordinance;

Staff will address the applicable development code standards under their respective chapters, later in this report.

3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property.

The proposed encroachments will in fact impact the vegetated corridor and wetland resources identified as significant on the “Wetlands & Stream Corridor” map, thus the applicant has applied for a comprehensive plan amendment as per TDC 18.775.130. The proposed change is evidenced by the development of the Fanno Pointe Condos in 2003, completion of the Tigard Public Library in 2004 and ODOT requirements to consolidate the access ways into these two sites. In addition, the Tigard Transportation System Plan completed in 2002 includes the SW Wall Street connection between SW Hall Blvd and SW Hunziker Street as part of its Street Improvement Plan.

Chapter 18.385. Miscellaneous Permits:

Chapter 18.385 includes criteria for miscellaneous permits including Tree Removal Permits and Sensitive Lands Reviews. The criteria found in this chapter are repeated in the respective subsequent chapters of the development code, 18.775 and 18.790.

This application is requesting a Sensitive Lands Permit and a Tree Removal Permit. Staff will address these criteria under their respective chapters, later in this report.

Chapter 18.390. Decision Making Procedures:

Chapter 18.390.020 describes the four types of decision-making procedures. Type I procedures apply to ministerial permits and actions containing clear and objective approval criteria and are decided by the Director. Type II procedures apply to quasi-judicial permits and actions that contain some discretionary criteria and are also decided by the Director but include provisions for public notice and opportunities for appeals. Type III procedures apply to quasi-judicial permits and actions that contain predominantly discretionary approval criteria. Type III-PC actions are decided by the Planning Commission with appeals to the City Council. Type III-HO actions are decided by the Hearings Officer with appeals to City Council. In cases where both the Hearings Officer and Planning Commission are involved, the Planning Commission has preferential jurisdiction, per Tigard Development Code (TDC) Section 18.390.080(D)(2)(a). Type IV procedures apply to legislative matters which involve the creation, revision, or large-scale implementation of public policy. Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

This application includes all four types of decision-making reviews. Pursuant to 18.390.080.D.2, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings can be consolidated so that one approval authority shall decide all applications in one proceeding and the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 18.390.100C in the following order of preference: the Council, the Commission, the Hearings Officer, or the Director. Therefore, this application will follow the procedures for Type IV reviews, with a recommendation being forwarded from the Planning Commission to City Council, who shall make the final decision on all applications contained herein. In addition, the notice shall identify each action to be taken; the decision on a plan map amendment shall precede the decision on other actions; and the separate actions shall be taken on each application.

Chapter 18.390.050 B2e states that applications shall include an impact study to quantify the effect of the development on public facilities and services.

The permit application includes an impact study (Attachment 8) that addresses the impacts on the transportation system, the drainage system, the parks system, the water system, the sewer system, and the

noise impacts of the development.

Chapter 18.390.060G states that for legislative map and text amendments (Comprehensive Plan and Development Code) the recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors:

- ♦ **The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**
- ♦ **Any federal or state statutes or regulations found applicable;**
- ♦ **Any applicable Metro regulations;**
- ♦ **Any applicable Comprehensive Plan policies; and**
- ♦ **Any applicable provisions of the City's implementing ordinances.**

This report addresses the applicable standards listed above in the review section covering the proposed comprehensive plan amendment as it applies to applicable Statewide Planning Goals, Federal or state regulations, Metro regulations, City's Comprehensive Plan policies and provisions of the City's Development Code.

Chapter 18.510. Residential Zoning Districts:

Chapter 18.510 lists the permissible uses and development standards for residential zones.

The R-12 zoning district is designed to accommodate a full range of housing types at a minimum lot size of 3,050 square feet. No residential uses are proposed as part of this application. The development standards contained in this chapter refer primarily to development occurring on parcels or lots (i.e. lot size, lot width, lot coverage, setbacks). The height limit is universally applied, but the proposal does not approach 35 feet in height. Refer to the profile shown on Sheet L1 in Section 4 of the applicant's submittal. The proposal for a collector street does not conflict with the R-12 zone standards.

Chapter 18.725. Environmental Performance Standards

18.725.020. General Provisions: A: Compliance with applicable state and federal regulations.

This project shall comply with applicable state and federal regulations related to erosion control and water quality as conditioned by the wetlands permits issued by the Oregon DSL and the US Army Corps of Engineers. Violations of other state and federal regulations pertaining to noise, odor and discharge of matter would be addressed by nuisance enforcement.

Chapter 18.775. Sensitive Lands Permits:

Chapter 18.755 contains regulations to restrict development within sensitive land areas.

This proposal involves placing limited fill, road improvements and utilities within a wetland area and natural drainageway. As such, a sensitive lands review is required for each types of resource. As described previously, since this is a consolidated proceeding with a Comprehensive Plan Amendment, the highest review authority shall make the final decision on all the included requests. Therefore, the application is being processed as a Type IV procedure.

18.775.030 Administrative Provisions

A1. Interagency Coordination. The necessary permits for all "development" shall include a CWS Service Provider Letter.

An amended service provider letter was issued by CWS (Attachment 11) which specifies conditions and requirements necessary for the applicant to comply with CWS standards.

B1. Alteration or Relocation of Water Course. The Director shall notify communities adjacent to the affected area and the State Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;

B2. The Director shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished.

Maintenance shall be assured by the fact that most of the impact area is within public right of way, and the remainder will be in a dedicated greenway tract. According to the Wetland Mitigation Plan, the City of Tigard will be responsible for maintenance of the mitigation site during the 5-year monitoring period. Maintenance recommendations for corrective action will be included in the annual wetland monitoring reports, and these actions will be implemented as needed. The Plan goes on to explain that long-term protection of the mitigation site will be ensured by placing deed restrictions over the mitigation site properties owned by the City of Tigard and the Fanno Pointe Condominium Owners Association. According to conditions of the CWS Service Provider Letter (as stated in Attachment 11), maintenance and monitoring, as well as, performance assurances for the vegetated corridor shall comply with CWS standards.

Condition: The applicant shall finalize a maintenance agreement with the Fanno Pointe Condominium Owners Association for the maintenance to the mitigation site on the Fanno Pointe Condo property and submit the agreement prior to commencement of any site work.

18.775.040 General Provisions for Floodplain Areas.

This Section requires permit review for floodplain areas to determine whether building sites will minimize the potential for flood damage.

The proposed roadway improvements will not be located within the 100-year floodplain. The watermain extension included in the roadway does not extend into the 100-year floodplain and its elevation is above the floodplain to preclude floodwater from infiltrating into the water system. Portions of the stream restoration and plantings will be located within the floodplain. However per Section 18.775.020 C2, stream and wetland restoration and enhancement programs performed under the direction of the City are exempt from the sensitive lands provisions.

18.775.050 General Provisions for Wetlands

A. Code compliance requirements. Wetland regulations apply to those areas classified as significant on the City of Tigard “Wetland and Streams Corridors Map”, and to a vegetated corridor ranging from 25 to 200 feet wide, measured horizontally, from the defined boundaries of the wetland, per “Table 3.1 Vegetated Corridor Widths” and “Appendix C” Natural Resource Assessments of the CWS “Design and Construction Standards”. Wetland locations may include but are not limited to those areas identified as wetlands in “Wetland Inventory and Assessment for the City of Tigard, Oregon,” Fishman Environmental Services, 1994.

The location of the proposed roadway improvement is identified as having two locally significant wetlands (E-18, a manmade pond along Pinebrook Creek, and E-19, associated wetlands). The extent of the vegetated corridors as determined by CWS are shown in the applicant’s Attachment 11. The proposal is therefore subject to sensitive lands review for wetlands.

B. Delineation of wetland boundaries.

Precise boundaries may vary from those shown on wetland maps; specific delineation of wetland boundaries may be necessary. Wetland delineation will be done by qualified professionals at the applicant’s expense.

Three wetland delineations were conducted by different consultants. A wetland delineation was prepared for the Tigard Library site including the Wall Street extension by Kurahashi & Associates in June 2002. Another delineation report for the proposed Wall Street right of way extending east across the railroad tracks was prepared by Pacific Habitat Services in 2003. A wetland delineation report for the adjacent was prepared for Fanno Pointe Condos by Rhea Environmental Consultants in August 2002. The

consolidated delineations are shown in the existing conditions drawing as part of the DSL and Army Corps permit application (Attachment 5 – Sheet 2a and 2b).

The extent of the vegetated corridors as determined by CWS are shown in the applicant's Attachment 11. The applicant has submitted a report by Fishman Environmental Services (included in the DSL/Army Corps Permit, attachment 5) and maps from a survey performed by DeHaas and Associates, attachment 11. This criterion is satisfied.

18.775.070 Sensitive Lands Permits

Approval criteria for various kinds of sensitive areas are presented in Sections 18.775.070B-18.775.070E.

18.775.070A. Permits Required

A sensitive lands permit is required since the applicant is proposing improvements within sensitive lands areas, including drainageways and wetlands.

18.775.070B. Within the 100-year floodplain

While the roadway improvements are not located within the floodplain, portions of the stream restoration and plantings will be located within the floodplain. However per Section 18.775.020 C2, stream and wetland restoration and enhancement programs performed under the direction of the City are exempt from the sensitive lands provisions.

18.775.070D. Within drainageways.

The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:

1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;

The applicant has conducted an alternatives analysis for the project that demonstrates that the proposed impacts are the minimum practicable for the project goal (Attachment 6). In addition to selecting the most feasible and least impacting road alignment, impacts are further reduced by removing much of the planter strip along the south side of the road to maintain as great a distance as possible from the resource. Phase 1 of the project was recently redesigned to reduce the impacts on sensitive lands to minimize disturbances to the greatest extent possible given the project requirements. The length of the proposed roadway was reduced from 425 feet to 350 feet, thus reducing the vegetated corridor impacts for Phase 1 from 24,274 sf to 18,429 sf (0.42 acres). The proposed vegetated corridor impacts are summarized in the file (Attachment 11, Figure 1). The redesigned Phase 1 also includes a retaining wall along the eastern edge of the Fanno Pointe Condos access to minimize the amount of vegetated corridor and wetland impact. A vegetated corridor mitigation plan has been approved by Clean Water Services as part of the issued Service Provider Letter. This criteria is satisfied.

2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;

The applicant has submitted an erosion control plan (refer to Attachment 4D) with final construction documents which includes erosion control features and notes that the erosion control measures shall comply with Erosion Prevention and Sediment Control Planning and Design Manual developed by Clean Water Services (CWS) and Field Manual for Erosion & Sediment Control prepared by ODOT. The erosion plan will address temporary and immediate effects of the construction process. The standards noted above will be adhered to during the project, or CWS may issue a stop work order until any noted problems are corrected. In addition, a planting vegetative plan meeting CWS standards (Attachment 11) will be implemented for the long term protection from soil migration.

Condition: The project will additionally meet the erosion control and water quality conditions contained in the DSL and Corps of Engineers wetland permits and in the water quality certification issued by the Department of Environmental Quality as part of the Corps of Engineers permit. Erosion control

measures shall comply with Erosion Prevention and Sediment Control Planning and Design Manual developed by Clean Water Services and the Field Manual for Erosion & Sediment Control prepared by ODOT.

3. The water flow capacity of the drainageway is not decreased;

Approximately 550 linear feet of new stream channel will be reconstructed to mitigate for the appropriate 270 linear feet of Pinebrook Creek to be impacted. As part of the Library project (and Hall Blvd. widening), basin hydrology and culver hydraulics were investigated to set the parameters for continuing stream relocation. Currently, the stream is twice culverted (24" pipe) for a length of 170 feet and not designed for fish passage. The reconfigured stream will be culverted once (57" X 38" pipe-arch for a distance of 65 feet) at the same design capacity as the Hall Blvd culvert (to carry 25-yr flows) and will meet fish passage requirements. Waterflow calculations for the Pinebrook culvert at the Fanno Pointe access were made using the Hall Boulevard flows to determine the runoff contributing to the culvert. The water surface profile plan created using the HEC-RAS river modeling program (Attachment 14 – memo from DeHass and Associates dated Dec. 2, 2005) shows the hydraulic grade line for both 2 year fish passage and 25 year storm flows would be accommodated by a 36" culvert. Given the increased capacity of removing the two smaller culverts and adding a larger (57" X 38") culvert, the application demonstrates that the water flow capacity will no be decreased by proposed improvements. This criterion has been satisfied

4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;

The applicant has provided an erosion control and vegetated corridor mitigation/planting plan that addresses such measures as approved by CWS and the City of Tigard Engineering. The Phase 1 vegetated corridor replacement area is located both west and east of Fanno Creek and totals 18,829 sf. Plant quantities for this area include 482 trees and 2,411 shrubs. Disturbed areas will be planted upon completion of the construction phase. This criterion has been satisfied.

5. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;

The new culvert and remaining open channel of the reconfigured Pinebrook Creek have been designed to carry 25-year flows along with provisions for intermittent flooding into adjacent wetlands. As stated in 18.775.070 D3, the stream which is currently twice culverted (24" pipe) for a length of 170 feet will be culverted once (57"X38" pipe-arch) at a distance of 65 feet and will meet fish passage requirements. The Library project included a 30-foot wide by 100-foot long stormwater treatment swale that was constructed to accommodate the additional Wall Street impervious surface runoff, maintaining the same characteristics and capacity. Water quality calculation for the Library Project with Wall Street including swale dimensions and design parameters are included in the file (Attachment 13, Stormwater Report, Appendix D).

6. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;

The applicant has shown approvals from Clean Water Services (#4203), U.S. Army Corps of Engineers (Corps #200300137), and the Oregon Division of State Lands (DSL #31719-RF) approvals for both phases of this project. This criterion has been met.

7. Where land form alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.

The property is owned by the City and has been dedicated as greenway. This project will connect the recently constructed segment of the Fanno Creek Trail on the library site with the existing segment of trail along the east side of the Fanno Pointe Condos. The conditions related to trail construction satisfy the requirements of this criterion.

18.775.070E. Within wetlands.

The Director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:

1. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the Comprehensive Plan Floodplain and Wetland Map nor is within the vegetative corridor established per “Table 3.1 Vegetative Corridor Widths: and “Appendix C: Natural Resources Assessments” of the CWS “Design and Construction Standards,” for such a wetland;

The proposed encroachments will in fact impact the vegetated corridor and wetland resources identified as significant on the “Wetlands & Stream Corridor” map, thus the applicant has applied for a comprehensive plan amendment as provided for in TDC 18.775.130. In doing so, these criteria will not apply to those impact areas. The remainder of the wetlands and vegetative corridor that are beyond the project impact area will not be subject to landform alteration. Due to the proposed encroachments and proximity of construction activities to the significant wetlands and vegetated corridor, construction boundaries shall be clearly defined in order to minimize disturbance of these areas.

2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;

The applicant has conducted an alternatives analysis for the project that demonstrates that the proposed impacts are the minimum practicable for the project goal (Attachment 6). In addition to selecting the most feasible and least impacting road alignment, impacts are further reduced by removing much of the planter strip along the south side of the road to maintain as great a distance as possible from the resource. As stated previously, the length of the proposed roadway improvement was 425 feet to 350 feet in order to avoid development within the 100-year floodplain. In addition, a retaining wall along the eastern edge of the condominium access was added to reduce the amount of wetland impact to the minimum. The total wetland impact area for Phase 1 was reduced from 0.25 acre to 0.11 acre. A wetland mitigation plan has been approved by the U.S. Army Corps of Engineers and the Oregon Department of State Lands.

3. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;

The applicant has provided a delineation of the wetland and a compensatory wetland mitigation plan, and has gained approval of a mitigation plan from U.S. Army Corps of Engineers and the Oregon Department of State Lands. The design of the reconfigured Pinebrook Creek will maintain wetland hydrology, and additionally stormwater treated by the water quality facility on the library site will be discharged into the wetland area to maintain its hydrologic characteristics and ensure that wetlands are not adversely effected by development.

Condition: The applicant shall carry out the wetland/vegetated corridor mitigation plan as approved with conditions by the Oregon Department of State Lands (DSL), U.S. Army Corps of Engineers and Clean Water Services.

4. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;

The applicant has provided an erosion control and wetland mitigation/planting plan that addresses such measures as approved by CWS and the City of Tigard Engineering Department. Phase 1 mitigation will consist of wetland creation (0.08 acres), wetland enhancement (0.29 acres) and wetland restoration (0.20 acres). A detailed plantings plan meeting CWS standards are contained in the file (Attachment 11). Disturbed areas will be planted upon completion of the construction phase. This criterion has been satisfied.

5. All other sensitive lands requirements of this chapter have been met;

All remaining sensitive lands requirements of the Sensitive Lands chapter can be achieved as indicated in

the proceeding analysis. This criterion has been satisfied.

6. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;

The applicant has shown approvals from Clean Water Services (#4203), U.S. Army Corps of Engineers (Corps #200300137), and the Oregon Division of State Lands (DSL #31719-RF) approvals for both phases of this project. This criterion has been met.

7. The provisions of Chapter 18.790, Tree Removal, shall be met;

An arborist report is included in the file (Attachment 9) Tree Removal provisions are addressed later under Chapter 18.790 in this report.

8. Physical Limitations and Natural Hazards, Floodplains and Wetlands, Natural Areas, and Parks, Recreation and Open Space policies of the Comprehensive Plan have been satisfied.

These policies will be addressed later in this report under Comprehensive Plan Policies. Physical Limitations and Natural Hazards and Wetlands are addressed under Policy 3.1, Floodplains are addressed under Policy 3.2, Natural Areas are addressed under Policy 3.4, and Parks, Recreation and Open Space are addressed under Policy 3.5.

18.775.090. Special Provisions for Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and South Fork of Ash Creek.

A. In order to address the requirements of Statewide Planning Goal 5 and the safe harbor provisions of Goal 5 administrative rule pertaining to wetlands, all wetlands classified as significant on the City of Tigard “Wetlands and Streams Corridors Map” are protected. No land form alternations or developments are allowed within or partially within a significant wetland, except as allowed/approved pursuant to Section 18.775.130.

The proposed roadway improvements for Phase 1 will impact 0.11 acres of wetlands designated as significant on the “Wetlands and Streams Corridor Map”. The applicant has applied for a Comprehensive Plan Amendment under a Type IV procedure to remove Goal 5 protections from this area. The amendment criteria are addressed later in this report.

B. In order to address the requirements of Statewide Planning Goal 5 and the safe harbor provisions of Goal 5 administrative rule pertaining to riparian corridors, a standard setback distance or vegetated corridor area, measured horizontally from and parallel to the top bank is established for the Tualatin River, Fanno Creek, Ball Creek, and South Fork of Ash Creek.

The proposed roadway improvements for Phase 1 will impact 0.42 acres of vegetated corridor designated as significant on the “Wetlands and Streams Corridor Map”. The applicant has applied for a Comprehensive Plan Amendment under a Type IV procedure to remove Goal 5 protections from this area. The amendment criteria are addressed later in this report.

18.775.130. Plan Amendment Option

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an Alternatives Analysis, as described in Section 3.02.5 of the CWS Design and Construction Standards. The applicant shall demonstrate that such an amendment is justified by either preparing an Environmental, Social, Economic and Energy (ESEE)

consequences analysis prepared in accordance with OAR 660-23-040 or by determining that the resource is “insignificant”:

The applicant has submitted an ESEE analysis that adheres to the requirements of OAR 660-23-040. This analysis is contained in Attachment 7 of the file.

1. The analysis shall consider the ESEE consequences of allowing the proposed conflicting use, considering both the impacts on the specific resource site and the comparison with other comparable sites within the Tigard Planning Area;

The ESEE analysis was developed to address Phase 1 of the proposed Wall Street project. The applicant’s analysis uses the tabular format that has been utilized by the Tualatin Basin Partners for Natural Places (the Goal 5 alliance of local governments in Washington County) which contains three scenarios; Allow, Limit, and Prohibit. The ESEE analysis follows an alternatives analysis (attachment 6) that compares other comparable sites in the planning area. The final alignment was recommended by project biologists to both minimize impacts and allow for mitigation opportunities. Once the preferred option was determined, the ESEE analysis (attachment 7) examines more thoroughly the impacts of allowing the conflicting use, identified as Alternative 2a (Connect Wall Street to Hall Boulevard at the south side of the Tigard Library Site); limit the conflicting use identified as Alternative 9 (Connect Wall Street to Hall Boulevard at the same location as the preferred alternative and shift the remaining roadway northerly to minimize impacts to Pinebrook Creek); and prohibiting the conflicting use (no build alternative).

2. The ESEE analysis must demonstrate to the satisfaction of the Tigard City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;

The summary of conclusions from the ESEE analysis argues that a strict “prohibit” decision would result in strong economic, social and energy consequences. In addition to the improved (and safer) access to the Tigard Public Library and Fanno Pointe Condos, the extension of Wall Street is identified in the Tigard Transportation System Plan for its importance to the City’s overall infrastructure. “Economic consequences including the continued degradation of the transportation system and the levels of service at nearby intersections. Undesirable social consequences stem from gridlock during peak hours. The energy consequences are most obvious when traffic is at a stand still and burn fuel while idling. In addition, increased energy costs to car operators, commercial and industrial traffic is a dual consequence. Both economic and energy costs result.”

The applicant did not identify as a positive consequence of the “limit” alternative that it may result in increased property values (for adjacent landowners) due to the increased ability to gain enhancement or restoration through mitigation, increased access to the Fanno Creek Trail, and safer vehicle access to the sites. However, the analysis identifies positive social consequences of the “limit” alternative which include reduction of potential loss of passive recreational and educational opportunities, scenic benefits, change to area character and improved road safety.

FINDINGS: Staff finds that the application presents sufficient evidence justifying the requested comprehensive plan amendment and reconfiguration of the natural resource. The alternatives analysis identifies nine feasible road alignment options and a final proposed alignment recommended by project biologists to both minimize impacts and allow for mitigation opportunities (refer to Attachment 6). As stated earlier, Phase 1 of the Wall Street extension was recently redesigned to reduce the impacts on sensitive lands to minimize disturbances to the greatest extent possible given the project requirements.

The Biological Assessment prepared by Fishman Environmental Services asserts that extensive modifications have been made to the historic conditions of Pinebrook Creek in the project area (from the culvert under Hall Blvd. to its confluence with Fanno Creek). Negative impacts to downstream hydrology and water quality has resulted from past development, straightening and shortening of the stream channel causing bank erosion and channel alterations to Pinebrook Creek between Hall Blvd. and Fanno Creek. The Biological Assessment prepared by Fishman Environmental Services found that the associated man-made ponds adversely affect the downstream water quality of Fanno Creek and the Pinebrook Creek is currently impassable at its confluence with Fanno Creek.

This assessment found that “long term benefits of the project include improvement of fish and wildlife habitat through restoration and enhancement of the altered lower Pinebrook Creek stream channel and associate wetlands, removal of invasive and noxious species, and reconnection of Pinebrook Creek with Fanno Creek to provide fish passage.” Although the assessment concedes that the removal of the on-line ponds may result in minor decreases to wildlife habitat value for some species, reconfiguring them into wetland habitat will provide a long-term net benefit to water quality and fish habitat. The report concludes that completion of the proposed mitigation activities (including the reconfiguration of Pinebrook Creek and wetlands) will create the capability for proper functioning at the site, and will likely result in an increase in the total area of properly functioning habitat available.

3. In particular, ESEE analysis must demonstrate why the use cannot be located on buildable land, consistent with the provisions of this chapter, and that there are no other sites within the Tigard Planning area that can meet the specific needs of the proposed use;

To understand this issue fully, one must consider the requirements of the Transportation System Plan (connect SW Hall to SW Hunziker for east west connectivity, refer to the DKS Memo on Linkages between Hall, Hunziker and Dartmouth, Attachment 17), ODOT requirements on access spacing and the need for consolidating access on the State Highway, and the design constraints for providing adequate stacking length for left turn movements both into the library site, and onto SW Hall Boulevard (attachment 12).

As part of granting approval for the Fanno Pointe Condos and Tigard Library, ODOT required that once necessary approvals had been obtained, and the street constructed, both projects would take access from Wall Street and not Hall Boulevard. The temporary driveway to the library would be removed as part of the construction process of building Wall Street, and the temporary access to the condo project would be closed off.

To handle the traffic needs for these two projects, the applicant submitted a study analyzing the amount of turning lane stacking distance needed. Staff asked that the applicant specifically to look at the limited impacts of these two traffic generators, instead of the total demand for a fully connected street, to assess ways to minimize the initial impacts to the resource area. According to the traffic memo provided in Attachment 12, a 100 foot long westbound left-turn lane should be provided along Wall Street with a 100-165 foot transition zone east of the turn lane. The redesigned improvements will provide 300-feet to accommodate this left-turn lane and a left-turn refuge for eastbound access to the Library and a transition between the two left-turn lanes.

Considering the competing goals of resource protection and the need for permanent joint access into the library and Fanno Pointe Condos (as well as ultimately possibility of an east-west connection between SW Hall and SW Hunziker) it is clear why the use cannot be located on sites identified in the buildable land inventory. First, there is no land designated as buildable between the library and condominium properties

that could accommodate the joint accessway. Second, to have any connection between SW Hall and SW Hunziker south of City Hall, a crossing of Fanno Creek is inevitable. As stated above, the applicant examined 9 alternative alignments to minimize the impact to habitat, the floodplain, and wetlands. There are no other sites within the planning area that could accommodate the specific needs of the proposed use.

4. The ESEE analysis shall be prepared by a team consisting of a wildlife biologist or wetlands ecologist and a land use planner or land use attorney, all of whom are qualified in their respective fields and experienced in the preparation of Goal 5 ESEE analysis;

According to the applicant's narrative, the analysis was performed by a team from Fishman Environmental Services (FES) consisting of Stacy Benjamin (a wetland ecologists and wetland/environmental assessment project manager with a M.S. in Ecology and Evolution), and Dan Stark (a land use planner that is certified by the American Institute of Certified Planners). [FES completed the original City of Tigard Local Wetlands Inventory that resulted in the Sensitive Lands Overlay Zone, and FES staff has completed at least 20 Goal 5 projects in the State of Oregon since the early 1990's, many of which included ESEE elements."

5. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the "Tigard Wetland and Stream Corridor Map" shall be amended to remove the site from the inventory.

The applicant has submitted mapping materials including updated natural resource site locations based upon site-specific delineations of natural resources and professional land surveying. These materials may be used to update the City's sensitive lands overlay and be submitted to Metro to update regional GIS layers.

FINDINGS: Based on the analysis above, staff finds that the applicant has satisfied the applicable review criteria contained in Chapter 18.775 of the Tigard Development Code.

18.790 Tree Removal

18790.030 Tree Plan Requirement.

A. Tree plan required. A tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided for any lot, parcel or combination of lots or parcels for which a development application for a subdivision, partition, site development review, planned development review or conditional use is filed.

B. The tree plan shall include the following: the location, size and species of all existing trees designated as significant; a program to save existing trees or mitigate tree removal over 12" in caliper; trees which are proposed to be removed, and; protection program defining standards and methods used by the applicant to protect the trees.

A plan for tree planting, removal and protection is not required since the applicant has filed for a comprehensive plan amendment and not a subdivision, partition, site development review, planned development or conditional use. However, the applicant has submitted a Tree Plan (Attachment 9c) prepared by Steven Goetz, a registered consulting arborist with the Pacific Resources Group, that identifies the location, size and species of existing trees; a program to save or mitigate for the trees, and protection standards and methods. The application includes an Arborist Report (on Phase 1 and 2 of the project) a tree assessment, a tree removal plan, a wetland mitigation/planting plan, an upland buffer planting plan and planting tables. This plan identifies 44 trees greater than 6" diameter. The applicant is

requesting removal of 9 trees greater than 12 inches in caliper size. As described previously, some of these trees are in sensitive lands areas and require permits to remove. The following table provides a summary:

Trees 6" or greater proposed for removal: Total = 19 trees (over 12" = 9 trees)

#3 (10" hawthorn)	#15 (26" locust)
#4 (12" hawthorn)	#21-25 (hawthorn cluster 5@12")
#6 (8", 6", 6" olive)	#27 (12" alder)
#8 (31" cedar)	#34 (8" ash)
#9 (32" cedar)	#35-36 (8", 12" ash)
#10 (10" locust)	#37 (18" ash)
#11 (10" locust)	#38 (15" ash)
#12 (9" locust)	#46 (10" locust)
#13 (6", 11" locust)	#47 (10" locust)
#14 (10" locust)	

Trees 6" or greater identified as Dead or Hazard: Total = 10 trees

#5 hazard, no permit required)	#31 (hazard, no permit required)
#7 (hazard, no permit required)	#33 (hazard, no permit required)
#17 (hazard, no permit required)	#39-40 (hazard, no permit required)
#20 (hazard, no permit required)	#50 (hazard, no permit required)
#26 (hazard, no permit required)	#53 (hazard, no permit required)

Trees 6" or greater proposed to be saved: Total = 15 trees (over 12" = 9 trees)

#18 (10" cedar)	#44 (19" birch)
#19 (14" fir)	#45 (10" locust)
#28 (12" crabapple)	#48 (16", 11", 11", 10", 10" willow)
#29 (15" willow)	#49 (14" alder)
#30 (20" ash)	#51 (10" willow)
#32 (12" ash)	#52 (9", 7", 6", 6", 5", 4" willow)
#41 (8", 6" hawthorn)	#54 (24" alder)
#42 (9", 8", 3", 3", 3" hawthorn)	

Total #of trees: 44

Total # of trees over 12" proposed for removal: 9

Total # of trees over 12" to be saved: 9

% of trees >12" retained: 50%

Total caliper inches removed: 182"

Required mitigation: 91"

B2c. Retention of 50% to 75% of existing trees over 12 inches in caliper requires that 50 percent of the trees to be removed be mitigated.

For the purposes of calculating the amount of required mitigation, the total number of trees that are greater than 12 inches diameter is 18. Nine of these trees (50%) are proposed for removal. The total number of caliper inches represented by this removal is 182 caliper inches. The amount of mitigation required is based on 50 percent of the total caliper inches removed, which equals 91 caliper inches.

The applicant's planting plan proposes mitigation that significantly exceeds the minimum requirement. The plan calls for replanting 336 caliper inches versus the 91 caliper inches required to be mitigated. This criterion is satisfied.

18.790.050 Removal permit required. Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775. The permit for removal of a tree shall be processed as a Type I procedure, as governed by Section 18.390.030, using the following approval criteria:

The Arborist Report indicates that 12 of the trees proposed for removal are within the sensitive land area and thus requires a tree removal permit. Of these trees, four are identified as hazardous, two are non-native species and 4 are 12" or less in diameter..

1. Removal of the tree must not have a measurable negative impact on erosion, soil stability, flow of surface waters or water quality as evidenced by an erosion control plan which precludes:

- a. Deposits of mud, dirt, sediment or similar material exceeding 1/2 cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge or as a result of the action of erosion;**
- b. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes where the flow of water is not filtered or captured on site using the techniques of Chapter 5 of the Washington County Unified Sewerage Agency Environmental Protection and Erosion Control rules.**

The applicant has submitted an erosion control plan (refer to Attachment 4D) with final construction documents which includes erosion control features and notes that the erosion control measures shall comply with Erosion Prevention and Sediment Control Planning and Design Manual developed by Clean Water Services and Field Manual for Erosion & Sediment Control prepared by ODOT. The erosion plan will address temporary and immediate effects of the construction process. The standards noted above will be adhered to during the project, or CWS may issue a stop work order until any noted problems are corrected. In addition, a planting vegetative plan meeting CWS standards (Attachment 11) will be implemented for the long term protection from soil migration.

2. Within stream or wetland corridors, as defined as 50 feet from the boundary of the stream or wetland, tree removal must maintain no less than a 75% canopy cover or no less than the existing canopy cover if the existing canopy cover is less than 75%.

The applicant is proposing to remove 9 viable trees, totaling 182 caliper inches, from the sensitive lands area to accommodate the roadway, and grading necessary to reconfigure Pinebrook Creek. To compensate for these removals, the area will be enhanced by replanting 104 big leaf maples, 108 Douglas firs, 29 Oregon white oaks, and 1,207 shrubs. The letter from Fishman Environmental Services (Attachment 9e in the file) states that current canopy cover in the area is 40% and that plantings within the stream and wetland corridor will result in a canopy cover greater than 40% within the a few years after plant establishment. The total 10-year canopy cover estimated for these plantings is 86,322 sf and the planting area of proposed mitigation is 24,142 sf. In addition to the trees that will repopulate the area, a variety of shrubs will be planted to provide a dense foliage cover around the stream to provide the benefits of shade which in turn will help regulate thermal pollution into Fanno Creek.

FINDING: Based on the analysis above, staff finds that the applicant has satisfied the applicable review criteria contained in Chapter 18.790 of the Tigard Development Code.

Chapter 18.795. Vision Clearance:

18.795.040 B. Obstructions prohibited. A clear vision area shall contain no vehicle, hedge, planting, fence, wall structure or temporary or permanent obstruction (except for an occasional

utility pole or tree), exceeding three feet in height, measured from the top of the curb, or where no curb exists, from the street center line grade, except that trees exceeding this height may be located in this area, provided all branches below eight feet are removed.

Based on the present development and the proposed improvements, there are no current or proposed obstructions within the vision clearance area.

18.795.040 A. Arterial streets. On all designated arterial streets the visual clearance area shall not be less than 35 feet on each side of the intersection.

SW Hall Boulevard is designated as an arterial, therefore the more stringent standards will apply to both streets. The road extension plan (Attachment 4C) shows 35-foot clear view triangles to provide visual clearance at both corners of the intersection of Wall Street and Hall Blvd.

FINDING: Based on the analysis above, staff finds that the applicant has satisfied the applicable review criteria contained in Chapter 18.795 of the Tigard Development Code.

Chapter 18.810. Street and Utility Improvements:

The relevant portions of this chapter for this project are limited primarily to the required street width. Section 18.810.030.

18.810.030. Streets

A. Improvements

The purpose of Phase 1 of the Wall Street extension is to provide access to the Tigard Library and the Fanno Pointe Condominiums. The extension of Wall Street is identified in the Transportation System Plan (TSP), a subdocument to the City's Comprehensive Plan. Subsequent phases are intended to extend SW Wall Street from Hall Blvd, east to the existing Wall Street east of the railroad.

B. Creation of Rights-of-way

The right of way will be created through a deed of dedication with the construction of the proposed roadway extension.

E. Minimum rights-of-way and street widths

This provision specifies that for 3 lane collector streets with bike lanes in residential areas, a minimum 70 foot wide section is required. The applicant is proposing a 72 foot wide right of way to accommodate an additional 2 feet for a wider center turn lane. In one section on the south side of the road, the applicant is proposing to construct a curb tight sidewalk to lessen the degree of impact on the vegetative buffer. This is allowable through 18.810.070 which provides "A planter strip separation of at least five feet between the curb and the sidewalk shall be required in the design of streets, except where the following conditions exist...there are significant natural features (large trees, water features, etc) that would be destroyed if the sidewalk were located as required." In this case, additional impacts to the sensitive lands would result from providing this planter strip area. By constructing the sidewalk without the planter strip, this area can be "transferred" to the opposite side of the sidewalk and planted with materials that will be consistent with a vegetative corridor.

F. Future street plan and extension of streets

Subsequent phases of the extension of Wall Street beyond the 350-feet proposed with this project intend to extend the street across Fanno Creek to connect with Wall Street east of the railroad as identified in the Tigard Transportation System Plan.

H. Street alignments and connections

Phase 1 of the Wall Street extension is intended to provide access to the Tigard Library and Fanno Pointe Condominiums.

N. Grades and curves

According to the Plan and Profile map (Attachment 4) showing the proposed street improvements, grades

for Phase 1 of the Wall Street extension will not exceed 7%, below the standard of 12% for collector streets.

Q. Access to arterials and collectors

The project will moving access to the Tigard Library and Fanno Pointe Condominiums off of Hall Blvd, which is an arterial and onto Wall Street which is a collector without through traffic.

AC. Traffic Study

This application includes a traffic study of impacts for this proposed Wall Street extension.

The standards for street improvements are met.

18.810.050. Easements

The applicant has indicated that easements for the utilities and roadway improvements will be provided as necessary.

18.810.070. Sidewalks

Improvements proposed for this project include 6-foot wide sidewalks on both sides of the street. Due to significant natural features along the south side of the roadway, much of the planter strip was removed from the south side of the street.

18.810.080. Public Use Areas

This Wall Street extension will provide access to the Tigard Public Library and connect the north and south segments of the Fanno Creek Trail.

18.810.100. Storm Drainage

The Library project included a 30-foot wide by 100-foot long stormwater treatment swale that was constructed to accommodate the additional Wall Street impervious surface runoff, maintaining the same characteristics and capacity. Water quality calculation for the Library Project with Wall Street including swale dimensions and design parameters are included in the file (Attachment 13, Stormwater Report, Appendix D).

18.810.110. Bikeways and Pedestrian Pathways

The project includes 6-foot wide bike lanes on both sides of Wall Street as required for collector streets. Also, the segments of the Fanno Creek Trail located north and south of the site will be connected providing bicycle and pedestrian access to this pathway.

FINDING: Based on the analysis above, staff finds that the applicant has satisfied the applicable review criteria contained in Chapter 18.810 of the Tigard Development Code.

City Comprehensive Plan Policies

A review of the comprehensive plan identified the following relevant policies for this application:

Policy 2 – Citizen Involvement

2.1.1 The City shall maintain an ongoing citizen involvement program and shall ensure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This policy has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390. Notice was mailed to all property owners within 500 feet of the project site and notice was additionally published in the Tigard Times prior to the hearing, including a property owners of record. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. The date of the Council hearing was included in the original notice to property owners.

Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

2.1.3 The City shall ensure that information on land use planning issues is available in an understandable form for all interested citizens.

Notice is provided in an understandable form, and contact information is provided for citizens if they have additional questions.

Policy 3 – Natural Features and Open Space

3.1 Physical Limitations and Natural Hazards and Wetlands

The City shall not allow development in areas having the following development limitations except where it can be shown that established and proven engineering techniques related to a specific site plan will make the area suitable for the proposed development. (Note: This policy does not apply to lands designated as significant wetlands on the floodplain and wetlands map.):

- a. Areas meeting the definition of wetlands under chapter 18.26 of the Community Development Code;**
- b. Areas having a severe soil erosion potential;**
- c. Areas subject to slumping, earth slides or movement;**
- d. Areas having slopes in excess of 25%; or**
- e. Areas having severe weak foundation soils.**

The area impacted by the proposed improvements include part of the vegetative corridor along Pinebrook Creek and wetlands. A field study was conducted on four test pits (in 100 foot intervals) along the Wall Street alignment and findings were summarized in the submitted Geotechnical Report (Attachment 10). Soils encountered in the study were interpreted as topsoil, alluvium, organic debris associated with swampy conditions, and micaceous silt and sand. The report provides design recommendations for site preparation, excavation, and the placement and compaction of all structural fill. Based on this report, there is no indication that the area has severe soil erosion potential, earth slumping, steep slopes, or weak foundation soils. The applicant has submitted final engineered drawings and a final geotechnical review (based on an evaluation of subsurface conditions on the site) which includes the design parameters for pavement structures (based on the number of equivalent 18-kip single axle loads), pavement sections and pavement materials for the proposed roadway. (Attachment 10). The applicant has presented required approvals for impacts to sensitive lands from Clean Water Services (#4203), U.S. Army Corps of Engineers (Corps #200300137), and the Oregon Division of State Lands (DSL #31719-RF) approvals for both phases of this project. The application has been reviewed through the sensitive lands procedures which address erosion control issues. The report covers the original proposed 425-foot Wall Street extension, which was recently shortened to 350-feet to avoid the floodplain.

3.2 Floodplains

3.2.1 The City shall prohibit any land form alterations or developments in the 100-Year Floodplain which would result in any rise in elevation of the 100-Year Floodplain.

The proposed roadway and watermain extension will not be located within the 100-year floodplain. Although portions of the stream restoration and plantings will be located within the floodplain, these restoration and enhancement activities to be performed under the direction of the City are exempt from the sensitive lands provisions per Section 18.775.020 C2.

Nevertheless, the application does include a hydraulic analysis (Attachment 14) prepared by DeHass and Associates, Inc. with a memo for Phase 1 of the Wall Street extension which certifies that the proposed improvements will “cause no-rise in Fanno Creek during a 100-year flood event.”

3.2.4 The City shall prohibit development within areas designated as significant wetlands on the floodplain and wetlands map. No development shall occur on property adjacent to areas designated as significant wetlands on the floodplain and wetlands map within twenty five (25) feet of the designated wetlands area. Development on property adjacent to significant wetlands shall be allowed under the planned development section of the code.

As discussed in this application report, the Development Code provides a mechanism for removing the resources from the wetland map, through a Comprehensive Plan Amendment Type IV ESEE analysis. By successfully removing these resources from the inventory, this policy would not apply.

3.2.3 Where land form alterations and development are allowed within the 100-year floodplain* outside the zero-foot rise floodway*, the City Shall Require:

b. Engineered drawings and/or documentation showing that there will be no detrimental upstream or downstream effects in the floodplain* area, and that the criteria set forth in the sensitive lands section of the code have been met (See FIS September 1981);

The Biological Assessment prepared by Fishman Environmental Services states that the project is not expected to increase erosion or flooding upstream or downstream of the project, due to the use of the water quality treatment facility (or bioswale) and energy dissipating rocked pads to prevent erosion at the point of discharge.

3.2.5 The City shall require the consideration of dedication of all undeveloped land within the 100-year floodplain plus sufficient open land for greenway purposes specifically identified for recreation within the plan.

The property already belongs to the City and/or has been dedicated as greenway. This project will connect the recently constructed segment of the Fanno Creek Trail on the library site with the existing segment of trail along the east side of the Fanno Pointe Condos.

3.4 Natural Areas

3.4.1 The City shall designate, in accordance with Goal 5, the following as areas of significant environmental concern.

a. Significant wetlands;

b. Areas having educational research value, such as geologically and scientifically significant lands; and

c. Areas valued for their fragile character as habitats for plants, animals or aquatic life, or having endangered plant or animal species, or specific natural features, valued for the need to protect natural areas.

These areas have been designated and are identified as being within sensitive land areas, primarily wetland and drainageways. The alternatives analysis states that the proposed alignment would impact the Pinebrook Creek riparian corridor and wetlands. Pinebrook Creek provides habitat for a variety of animals that are strictly aquatic, aquatic during one life stage, or highly dependent on the stream for life requisites. The pond has non-native mosquito fish, a variety of typical aquatic invertebrates, vascular aquatic plants and large amounts of algae (in summer). These impacts would reduce available habitat for aquatic invertebrates, frogs, water fowl, wading birds, and possibly turtles. The presence of a completed road

would introduce human activities that would have a disturbance effect on wildlife, resulting in reduced presence or activity of some wildlife species. The project proposes an upland buffer will be maintained adjacent to the wetland mitigation site and educational signs will be posted to request that the public avoid disturbing the area in order to increase the wildlife habitat function.

The Biological Assessment prepared by Fishman Environmental Services, includes a table (Table 1) summarizing the federally listed threatened and endangered species, candidate species, and species of concern potentially occurring in the Wall Street project area. Based on lists from the US Fish and Wildlife Service and the Oregon Natural Heritage Program. In 2003, Fishman staff visited the project site on four occasions to delineate wetlands, assess potential impacts, potential enhancement and mitigation areas, existing fish habitat conditions, and tour the site. In 2000, the Northwestern Pond Turtle, a federal Species of Concern (SOC) and a state critical (SC) species, was observed in the vicinity of the project site. The Biological Assessment indicates the project site contains “patches of suitable turtle habitat”, however, it goes on to state that turtles have not been documented on site and were not observed during their field visits of the project site. This Assessment states that project design will include turtle conservation measure will be part of the proposed project, such as creating a turtle barrier (of fencing or dense shrubbery) along the new road. The assessment also indicates that the proposed wetland and vegetated corridor mitigation will improve access and winter cover for turtles.

The recent redesign of Phase 1 will reduce the impacts on sensitive lands to minimize disturbances to the greatest extent possible given the project requirements. The length of the proposed roadway was reduced from 425 feet to 350 feet, thus reducing the vegetated corridor impacts for Phase 1 from 24,274 sf to 18,429 sf (0.42 acres). The proposed vegetated corridor impacts are summarized in the file (Attachment 11, Figure 1). The redesigned Phase 1 also includes a retaining wall along the eastern edge of the Fanno Pointe Condos access to minimize the amount of vegetated corridor and wetland impact. Currently, the stream is twice culverted (24” pipe) for a length of 170 feet and not designed for fish passage. The reconfigured stream will be culverted once (57”X38” pipe-arch for a distance of 65 feet) at the same design capacity as the Hall Blvd culvert (to carry 25-yr flows) and will meet fish passage requirements. The realigned stream will remove the two long culverts, and will follow the historic channel.

In general, the report concluded that the “potential for direct adverse effects resulting in significant or direct mortality of a listed species is minimal with this project. Any direct effects would likely be transitory and within the ability of both juveniles and adults to bypass or temporarily leave the proposed action area.”

FINDINGS: Given the conclusions of the biological assessment and the fact that Phase 1 has been redesigned to minimize the impacts to significant wetland and riparian resources, staff finds that applicant has addressed the potential adverse effects to areas of significant environmental concern.

3.4.2 The City shall:

a. Protect fish and wildlife habitat along stream corridors by managing the riparian habitat and controlling erosion, and by requiring that areas of standing trees and natural vegetation along natural drainage courses and waterways be maintained to the maximum extent possible;

This policy is addressed through the sensitive lands chapter of the development code.

d. Address Goal 5 rule Requirements pertaining to the preservation of wetlands once adequate information on the location, quality, and quantity of wetland sites is obtained. This Goal 5 review will include determining which wetland sites are ecologically and scientifically significant.

Citizens will participate in making policy recommendations for the protection and preservation of those wetland areas designated as significant. The City shall complete its Goal 5 review of wetland areas before the City's next periodic review, but no later than December 23, 1996.

The inventory of wetland areas designated as significant within the City of Tigard was completed by Fishman Environmental Services in December of 1994.

3.5 Parks, Recreation and Open Space

3.5.3 The City has designated the 100-year floodplain of Fanno Creek, its tributaries, and the Tualatin River as Greenway, Which will be the backbone of the open space system. Where landfill and/or development are allowed within or adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area for greenway adjoining and within the floodplain.

The property already belongs to the City and/or has been dedicated as greenway,. This project will connect the recently constructed segment of the Fanno Creek Trail on the library site with the existing segment of trail along the east side of the Fanno Pointe Condos.

3.5.4 The City shall provide an interconnected pedestrian/bikepath throughout the City.

This project will connect the recently constructed segment of the Fanno Creek Trail on the library site with the existing segment of trail along the east side of the Fanno Pointe Condos.

Policy 4 – Air, Water, and Land Resources

4.2.1 All development within the Tigard Urban Planning Area shall comply with applicable Federal, State and Regional water quality standards, including those contained in the Clean Water Services' Design and Construction Manual. (Rev. Ord. 02-15)

Compliance with these standards is assured through obtaining permits from the appropriate regulating agencies. Such approvals have been obtained from Clean Water Services, Division of State Lands, and the US Army Corps of Engineers.

Policy 7 – Public Facilities

7.1.1 The City shall:

- a. Prepare and implement a capital improvements program in conjunction with Washington County and the applicable service districts;**
- b. Work with the service districts to provide a coordinated system for providing services;**
- c. Provide urban services in accordance with the Comprehensive Plan to the extent of the City's financial resources;**
- d. Use the capital improvements program as a means for providing for orderly growth and the efficient use of land;**

These policies serve as the basis for the need for the Transportation System Plan (TSP), a subdocument to the City's Comprehensive Plan adopted by resolution 02-33 (effective on October 10, 2002). The TSP lays out the City's Transportation improvement needs over a 20-year planning period and directs where growth or capital projects shall occur, and allows adjacent jurisdictions to coordinate their infrastructure. The extension of SW Wall Street is identified in TSP.

7.2 Storm drainage and wastewater management

7.2.1 The City shall require as a pre-condition to development that:

a. a site development study be submitted for development in areas subject to poor drainage, ground instability or flooding which shows that the development is safe and will not create adverse off-site impacts:

The applicant has submitted detail development plans and has delineated the flood plain. The applicant's engineer has submitted a certification stating that there will be no rise in the base flood elevation, and as discussed previously, the construction will be designed to resist damage.

b. Natural drainage ways be maintained unless submitted studies show that alternative drainage solutions can solve on-site drainage problems and will ensure no adverse off-site impacts;

The applicant is proposing to realign Pinebrook Creek. While generally discouraged, the present alignment is the result of prior landforming activities that redirected the creek to a more northerly alignment. Currently, the stream is twice culverted (24" pipe) for a length of 170 feet and not designed for fish passage. The reconfigured stream will be culverted once (57"X38" pipe-arch for a distance of 65 feet) at the same design capacity as the Hall Blvd culvert (to carry 25-yr flows) and will meet fish passage requirements. The realigned stream will remove the two long culverts, and will follow the historic channel.

c. All drainage can be handled on-site or there is an alternative solution which will not increase the off-site impact;

A stormwater report prepared to evaluate the water treatment facility on the library site considers the drainage from the 1st Phase of the Wall Street extension. Drainage will be conveyed to a stormwater treatment facility and discharged into Fanno Creek.

e. Erosion control techniques be included as a part of the site development plan.

The applicant has submitted an erosion control plan (refer to Attachment 4D) with final construction documents which includes erosion control features.

Policy 8 – Transportation

8.1.1 Plan, design and construct transportation facilities in a manner which enhances the livability of Tigard by:

a. Proper location and design of transportation facilities.

This Wall Street extension will provide access to the Tigard Public Library and connect the north and south segments of the Fanno Creek Trail. The facilities have been designed and reviewed by the City's Capital Improvement Division within the Engineering Department.

b. Encouraging pedestrian accessibility by providing safe, secure and desirable pedestrian routes.

The project includes 6-foot wide bike lanes on both sides of Wall Street as required for collector streets. Also, the segments of the Fanno Creek Trail located north and south of the site will be connected providing bicycle and pedestrian access to this pathway.

c. Addressing issues of excessive speeding and through traffic on local residential streets through a neighborhood traffic program. The program should address corrective measures for existing problems and assure that development incorporates traffic calming.

Not applicable to this application. Wall Street is classified in the Transportation System Plan (TSP) as a collector which is described as providing “both access and circulation within and between residential and commercial/industrial areas.” Phase 1 of the Wall Street extension will terminate west the Fanno Creek and is primarily intended to provide access to the Tigard Library and the Fanno Pointe Condominiums.

8.1.2 Provide a balanced transportation system, incorporating all modes of transportation (including motor vehicle, bicycle, pedestrian, transit and other modes)

The proposed roadway improvements will be consistent with the requirements for a “collector” as described in the TSP. Bicycle lanes, as well as motor vehicle and pedestrians are accommodated in the design.

8.1.3 Strive to achieve a safe transportation system by the development of street standards, access management policies and speed controls when constructing streets and by making street maintenance a priority and through a comprehensive program of engineering, education and enforcement.

These standards are achieved through the requirements in Chapter 18.810 of the development code.

FINDING: Based on the analysis above, staff finds that the proposed project has addressed the relevant policies contained in the Tigard Comprehensive Plan.

METRO Framework Plan

Metro Functional Plan Title 3 – Water Quality, Flood Management, and Fish/Wildlife Habitat Conservation – protect beneficial uses and functional values of water quality and flood management resources by limiting uses in these areas. Establish buffer zones around resource areas to protect from new development.

As stated earlier in the review of applicable Development Code criteria, the Code allows for flexibility for developments when they are adjacent to natural resource areas. This is in addition to the City’s, Clean Water Services, state and federal standards protecting natural resource areas. The Clean Water Services standards are intended to comply with Metro’s Title 3. The proposed development, therefore, does not conflict with Title 3 requirements.

Metro Functional Plan Title 6 – Regional Accessibility (Regional Transportation Plan) – The RTP provides a regional plan for transportation improvements and requires City’s plans to be consistent. The RTP also provides plans for Transit, TDM and pedestrian mobility. The RTP replaces Metro Functional Plan Title 6.

The City has adopted the Transportation System Plan which implements and adheres to the requirements of the Regional Transportation Plan.

Metro Functional Plan Title 13 – Nature in Neighborhoods – conserve, protect, and restore a continuous ecologically viable streamside corridor system, from the streams’ headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with upland wildlife habitat and with the surrounding urban landscape; and control and prevent water pollution for the protection of the public health and safety, and to maintain and improve water quality throughout the region.

Title 13 is part of the regional approach to implement Statewide Planning Goal 5. As part of the proposed project, wetlands, vegetated corridor and habitat were inventoried and delineated. An Environmental, Social, Economic and Energy (ESEE) analysis was conducted using the methodology compliant with the methods used by Metro and the Tualatin Basin Partners for Natural Places. Protections are in place via the development code restrictions. The applicant is proposing to amend the wetland inventory to remove the protection to the wetlands, and relocate the waterway. This is being done as a Comprehensive Plan Amendment per TDC Section 18.775.130 to remove the Goal 5 protections from the property. The review process also requires compensatory mitigation and reestablishment of the wetland area. Once the new wetland has been established, this will be added back into the inventory of protected sites. A thorough review by local (CWS), state (DSL), and federal (USACE) agencies has been conducted, and approvals have been issued from all three (Attachments 5 and 11).

As stated earlier in this report, the Biological Assessment prepared by Fishman Environmental Services found that completion of the proposed mitigation activities (including the reconfiguration of Pinebrook Creek and wetlands) will create the capability for proper functioning at the site, and will likely result in an increase in the total area of properly functioning habitat available.

FINDING: Based on the analysis above, staff finds that the proposed project has addressed the relevant policies contained in the Tigard Comprehensive Plan

Statewide Planning Goals

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390. A notice was mailed to all property owners within 500 feet of the project site and the notice was additionally published in the Tigard Times prior to the hearing. After the Planning Commission public hearing, additional notice will be published prior to the City Council hearing. Two public hearings are held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided.

Statewide Planning Goal 2 – Land Use Planning:

This goal outlines the land use planning process and policy framework. The Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals.

The Development Code implements the Comprehensive Plan. The Development Code establishes a process and policies to review changes to the Goal 5 Safe-harbor Rules consistent with Goals 2 and 5. The applicant's plan provides analysis and policies, with which to evaluate a request for amending the Code consistent with Goal 2. As discussed within this report, the proposed amendments comply with the Development Code and Comprehensive Plan criteria.

Statewide Planning Goal 5 – Natural Resources

Requires the inventory and protection of natural resources, open spaces, historic areas and sites suitable for removal and processing of mineral and aggregate resources.

This goal is met because the resources have been inventoried and delineated. Protections are in place via the development code restrictions. The applicant is proposing to amend the wetland inventory to remove

the protection to the wetlands, and relocate the waterway. This is being done as a Comprehensive Plan Amendment to remove the Goal 5 protections from the property through preparation of an Environmental, Social, Economic and Energy (ESEE) analysis. The review process also requires compensatory mitigation and reestablishment of the wetland area. Once the new wetland has been established, this will be added back into the inventory of protected sites. A thorough review by local (CWS), state (DSL), and federal (USACE) agencies has been conducted, and approvals have been issued from all three (Attachments 5 and 11).

Statewide Planning Goal 6 – Air, Water and Land Resource Quality,

This goal is intended to regulate all waste and process discharges into the air, water, or lands of the state. Waste and Process Discharges refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom.

The proposal includes a long term erosion control component through its replanting plan, and temporary impacts to soils will be controlled during the construction process. Pollution control manholes and water quality swales will be incorporated into the project to reduce point source contaminants. The combination of these efforts will ensure that this goal is met.

Statewide Planning Goal 11 – Public Facilities and Services

This goal is intended to plan and develop a timely, orderly and efficient arrangement of public facilities to serve as a framework for urban and rural development.

The temporary accessways to the Tigard Public Library and Fanno Pointe Condos has been determined unsafe by not meeting ODOT spacing standards. The proposed Wall Street extension will enhance safety and access to the Tigard Public Library and connect the north and south segments of the Fanno Creek Trail.

Statewide Planning Goal 12 - Transportation:

This goal is intended to provide and encourage a safe, convenient and economic transportation system. This Goal is implemented by Oregon Administrative Rule 660-12, which is also known as the Transportation Planning Rule (TPR).

Chapter 18.810 of the development code was recently amended to ensure consistency with both the Transportation Planning Rule, and the adopted Transportation System Plan (TSP). The applicant's proposal is the first of two phases to complete a connection to SW Hunziker from SW Hall Boulevard, which is identified in the TSP. The city is obligated to pursue improvements identified in the TSP as part of its comprehensive traffic management program. Although, the primary purpose of this project is to consolidate the accessways into the Tigard Public Library and the Fanno Pointe Condominiums off of Hall Blvd., the applicant's request is also in part to implement the objective of the TSP. Since other obstacles exist that are outside the applicant's control (namely the inability to receive approval for an at grade crossing) which prevent full connection at this time, only the first phase is being proposed. This first phase also implements the principles of the TSP by consolidating accesses along the state highway arterial (SW Hall Boulevard).

FINDING: Based on the analysis above, staff finds that the proposed amendments do not violate applicable Statewide Planning Goals.

State or Federal Regulations

Oregon Revised Statutes, ODOT Authority to Regulate Highways

Oregon Revised Statutes Chapter 374 addresses ODOT's authority to control access to state highways. The requirement that access be consolidated for the Library and Fanno Pointe complies with these statutes generally.

Oregon Revised Statutes Chapter 196 addresses general wetland requirements within the state. These statutes are administered by Division of State Lands.

Federal Clean Water Act, section 404

The clean water act is responsible for regulating impacts to wetlands and other navigable waters of the United States. The agency primarily responsible for implementing these federal statutes is the Army Corps of Engineers. The Corps has reviewed the proposal and issued an approval for wetland fill (Attachment 5).

SECTION VII. OTHER STAFF COMMENTS

The City of Tigard Police Department Crime Prevention Officer has reviewed the proposal and has no objection to it. The Development Review Engineer and Public Works Project Engineer received copies of the proposal for review and submitted no comments or objections.

The City of Tigard Arborist has reviewed the proposal and has filed the following comments. Due to the fact that this area is so close to Fanno Creek and a substantial amount of land will be enhanced with native plants, I strongly recommend that any non-native trees be girdled and left standing (if safe to do so). The resulting snags will provide habitat, especially the invasive hawthorns.

Response: A condition will be set for the tree removal plan that any non-native trees shall be girdled and left as snags rather than removed to provide habitat in areas where there are no safety issues.

SECTION VIII. AGENCY COMMENTS

The US Army Corps of Engineers has reviewed the proposal as part of the wetlands permit process and submitted conditions of approval (Corps #200300137) which are included with the application.

Metro – Land use and Planning was given the opportunity to review this proposal and submitted no comments or objections.

Oregon Department of State Lands has reviewed the proposal as part of the wetlands permit process and submitted conditions of approval (DSL #31719-RF) which are included with this application.

Oregon Department of Fish and Wildlife, Department of Land Conservation and Development, Department of Environmental Quality and Department of Transportation were given the opportunity to review this proposal and submitted no comments or objections.

Clean Water Services has reviewed the proposal as part of the vegetated corridor permit process and submitted conditions of approval (#4203) which are included with this application.

Washington County Department of Land Use & Transportation has reviewed the proposal and has no objection to it.

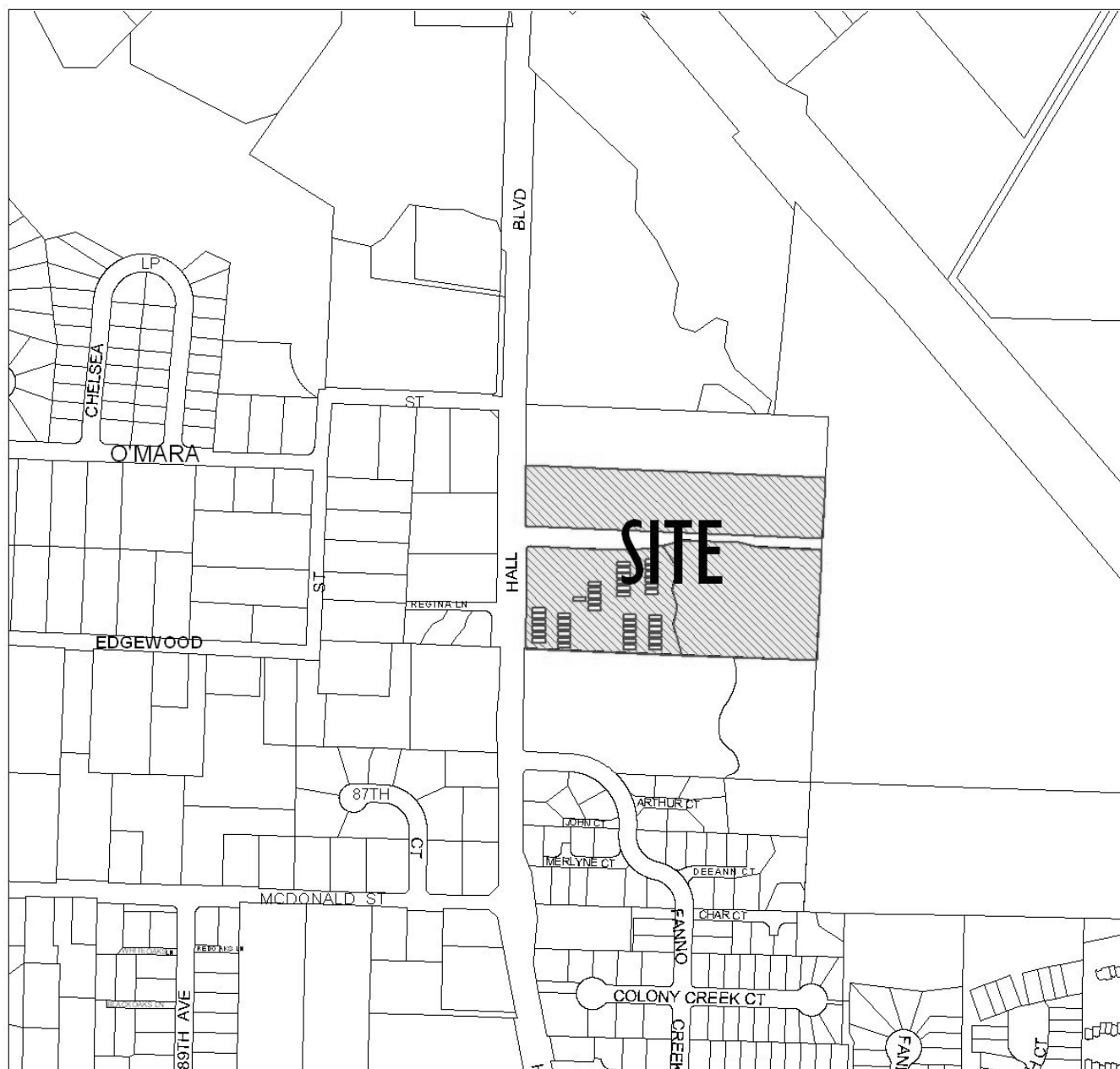
Comcast Cable Corp, Portland General Electric and NW Natural Gas Company were given the opportunity to review this proposal and submitted no comments or objections.

PREPARED BY: Denver Igarta
Associate Planner

DATE

REVIEWED BY: Richard Bewersdorff
Planning Manager

DATE



Community Development

CITY of TIGARD
GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

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CPA2004-00001
SLR2004-00003
SLR2006-00001
TRE2006-00001-9
=====

**WALL STREET
EXTENSION**

Tigard Area Map

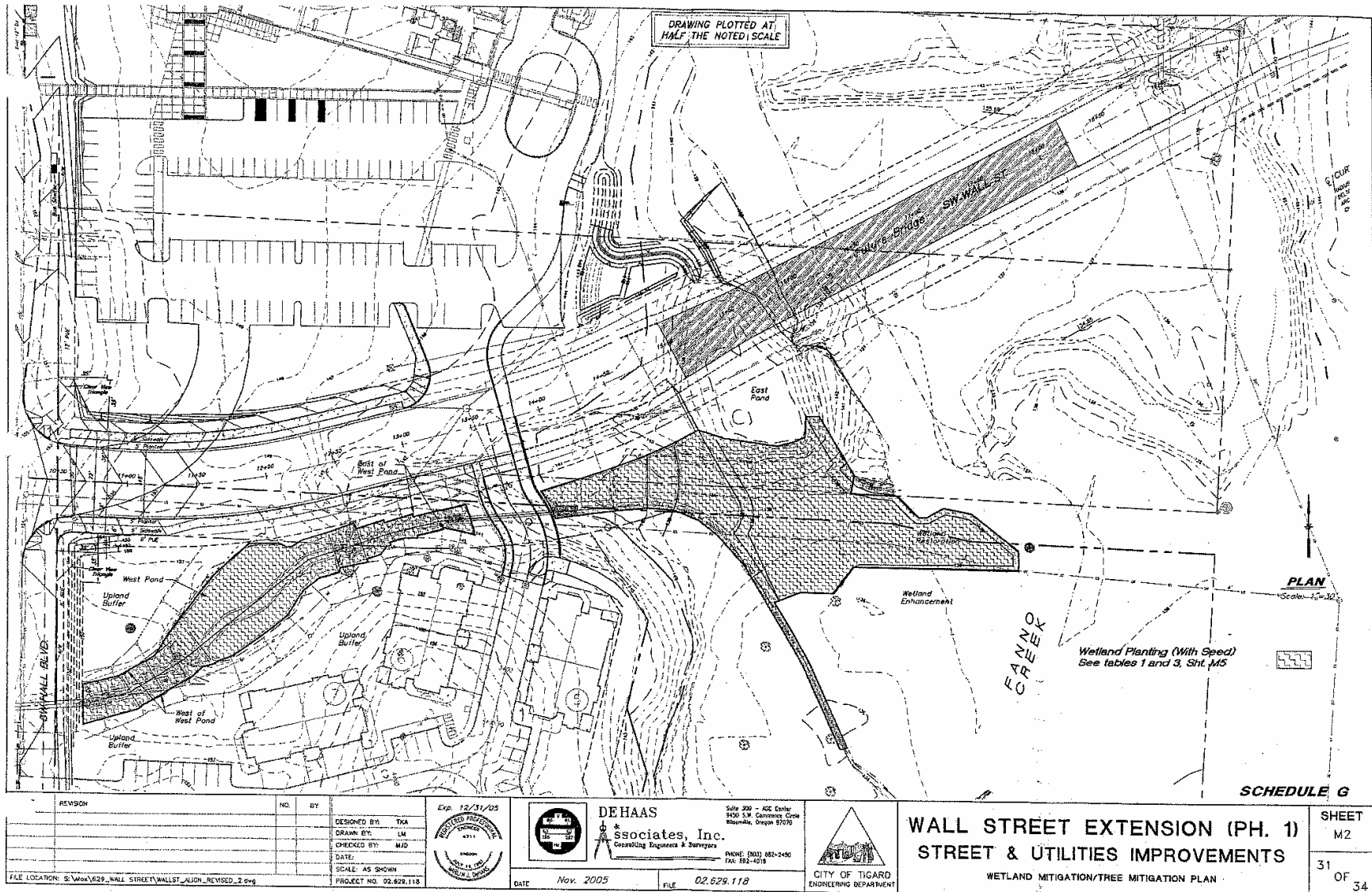
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0 100 200 300 400 500 Feet
1"= 382 feet

City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Plot date: Jan 20, 2006; C:\magic\MAGIC03.APR





MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Denver Igarta

RE: Addendum to the Staff Report on SW Wall Street

DATE: April 25, 2006

After the staff report on the SW Wall Street extension was finalized and disseminated to members of the Planning Commission, the following factual errors were revealed.

1. Based on the application materials, the staff report indicates that the project proposes to extend SW Wall Street by 350 feet to the east of SW Hall Boulevard. Prior to the Planning Commission hearing, the applicant's representative alerted staff that the length of the proposed roadway was misstated in the project summary of their application. SW Wall Street will actually extend **360 feet** to the east of SW Hall Boulevard. The maps, technical materials and impact calculations submitted in the application were not effected by the error in the project summary. This mistake was addressed and clarification was made during the public hearing before the Planning Commission on April 3, 2006.
2. In multiple places within the staff report (pages 5, 11, 23, & 25), the two existing Pinebrook Creek culverts planned for removal are classified as 24 inch pipe for a length of 170 feet. In actuality, the culverts include a 12 inch pipe for a length of 140 feet and an 18 inch pipe for a length of 10 feet.
3. The staff report addresses Metro' Regional Accessibility Policy, formerly Title 6 of the Urban Growth Management Functional Plan. This Policy was superceded by Metro's Regional Transportation Plan (RTP) when it was adopted in 2000. All of the requirements of Title 6 have been incorporated into Chapter 6 of the RTP.

GROUP

MACKENZIE

April 17, 2006

City of Tigard
Attention: Denver Igarta
13125 SW Hall Blvd
Tigard, OR 97223-8199

Re: **Wall St**
Project Number 2050046

Dear Denver:

It is the project team's understanding that four letters have been submitted to date regarding the Wall Street Extension project (CPA 2004-0001 / SLR 2004-00003/SLR 2006-00001/TRE 2006-00001 - 00009). These letters are from The Biodiversity Project of Tigard, John Frewing, Leander Clifford, and Pamela Sigler. The letters identify similar areas of concern. As such, the following addresses the letters by grouping similar areas of concern and providing a response to each.

Land Use Application Process: Per the application narrative and the staff report, this application includes a Comprehensive Plan Amendment to remove Goal 5 protection from the wetlands impacted by the roadway improvements. A Sensitive Lands Review is required for impacts to the wetlands and drainageways and the proposed reconfiguration of the Pinebrook Creek and to approve the mitigation proposed for these impacts. Tree Removal permits are required for the removal of trees within the Sensitive Land Area. The Comprehensive Plan Amendment is a Type III-PC process, per Section 18.380.030 of the Code. As all of the applications have been submitted concurrently, the applications are elevated to the Type I process. No Conditional Uses are requested with this application.

Authorization from all property owners was obtained, and confirmed, as part of the submittal process. Federal Insurance Administration notification will occur after the appropriate City approvals have been obtained.

Wall St Phase Clarification: The land use applications define Phase I of Wall Street as the extension from Hall Blvd to 360 ft to the east. As no other portion of Wall Street exists at this time, the Phase I title is appropriate. However, in regards to the City's Capital Improvement Program, and the planned construction, the City's engineering department titled the signal improvements previously completed as Phase I. As such, with the construction documents for this Wall St extension, it may be titled Phase Ib and/or Phase II. Regardless, only 360 ft of Wall St is proposed at this time.

Sensitive Lands :

- 18.385.040: This application includes a Comprehensive Plan Amendment to remove the Sensitive Lands designation from the wetlands and other sensitive lands within the road

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alignment. With the approval of this application, the Wetland and Stream Corridor map will be modified.

- 18.775.020C.2: Section 775.020 concerns the applicability of uses requiring a Sensitive Lands Permit. The roadway is not located within the floodplain; however the proposal includes placing limited fill, road improvements, and utilities within a wetland area and a natural drainageway. In addition, wetland mitigation, including creation and enhancement is located within the floodplain. Per subsection 020C.2, stream restoration and plantings are permitted within the floodplain. Regardless, a Sensitive Lands Permit has been requested and no exemptions have been claimed.
- 18.775.070B.7 – This section requires the consideration of dedication of open land area within and adjacent to the floodplain that includes portions at a suitable elevation for pedestrian and bicycle pathways. Per the application and staff report, the project includes a segment of the Fanno Creek Trail and the dedication of greenway.

100-year Floodplain: Construction of the proposed Phase 1 of the Wall Street extension does not involve grading in the 100-year floodplain for the proposed roadway. Excavation is proposed in the 100-year floodplain to conduct the wetland mitigation activities. These activities will not result in the placement of fill in the floodplain or any rise in the elevation of the 100-year flood. The comment regarding “modify existing channel as per field engineering” refers to the fact that an SWCA biologist will be present in the field during the excavation of the new stream channel to connect Pinebrook Creek to Fanno Creek in order to minimize impacts to existing natural resources in the mitigation area.

Wetland Assessment: Wetland delineations for the Wall Street extension project area were conducted by several consultants in 2002 and 2003. These wetland delineations were submitted to the Oregon Department of State Lands (DSL) for review and approval, and DSL issued concurrence letters for the wetland delineations within the project area. The calculation of proposed wetland impacts was based upon the DSL-approved wetland delineation maps. The photos taken by Ms. Beilke showing ponding south of the East Pond are located outside the footprint of the Phase 1 road extension and show the vicinity of the proposed wetland mitigation area and associated Clean Water Services vegetated corridor. No loss of wetland is proposed in these areas.

Permit modifications have been received from the Corps and DSL for the currently proposed 360-foot length of Phase 1 of the Wall Street extension. The modified Corps permit was issued on March 8, 2006, and the modified DSL permit was issued on February 8, 2006.

Clean Water Services: The project design was revised to meet Clean Water Services standards, and the project has been approved by Clean Water Services (CWS File No. 4203). The Wall Street extension project as designed is not listed as an approved use by CWS, such as a road that crosses a vegetated corridor from one side to the other, as Ms. Beilke states. Therefore, the project was required to complete Clean Water Services' Tier 2 alternatives analysis review process which requires that the applicant demonstrate the project has been

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designed to minimize vegetated corridor impacts and that the project will result in a public benefit resulting from the encroachment into the vegetated corridor.

The Wall Street extension project design was revised to include a retaining wall along the downstream edge of the Fanno Pointe access Mr. Frewing states. This revision included a retaining wall, which keeps the road construction out of the 100 year flood plain and minimizes vegetated corridor impacts by utilizing a retaining wall along the downstream edge of the Fanno Pointe access as Mr. Frewing states. In addition, a curb-tight sidewalk design was utilized to eliminate the planting strip on the south side of Wall Street from Station 11+25 to Station 14+75, where the proposed roadway is in close proximity to the West Pond and the proposed location for the reconfigured Pinebrook Creek. The curb tight sidewalk design resulted in a decrease in proposed vegetated corridor impact of 1,472 square feet.

Pinebrook Creek Vegetated Corridor Encroachment: Clean Water Services allows encroachments into the vegetated corridor for up to 20% of the frontage length by 20% of the vegetated corridor width under their vegetated corridor averaging process. Since the proposed Wall Street extension encroaches further than the vegetated corridor averaging process allows, the applicant was required to complete Clean Water Services' Tier 2 alternatives analysis review process. The project has been approved by Clean Water Services (CWS File No. 4203).

Pinebrook Creek Culvert – The upstream contribution used in hydraulic calculations for sizing the Pinebrook culvert was based upon full build-out per the Comprehensive Plan and Zoning designations. Accordingly, the flow calculations are not upset by development that has occurred since 2003.

Endangered Species – The red-legged frog and great blue heron are not federally listed under the Endangered Species Act. The red-legged frog is categorized as a federal Species of Concern. Neither the red-legged frog or the great blue heron are provided with protection under the Endangered Species Act. It is possible that bald eagle may fly over the project site due to the site's proximity to the Tualatin River; however, Fanno Creek and Pinebrook Creek in the project area are not large enough water resources to provide habitat for the bald eagle. The bald eagle is a threatened species, not an endangered species.

Tree Removal – Trees proposed for removal include the minimum amount necessary. It should be noted that while all the trees proposed for removal are listed in the application, a Tree Removal permit is only required for the nine trees within the Sensitive Land Area. In addition, as mitigation for the trees removed, the project include the planting of 336 caliper inches of trees, which is 369% of the required mitigation of 91 inches.

Removal of the 2 deodora cedars is necessary to conduct the wetland mitigation activities including relocating Pinebrook Creek and creating stream-associated wetlands. The wetland buffer adjacent to the relocated Pinebrook Creek and wetlands will be planted with hundreds of native trees and shrubs as part of the mitigation plan.

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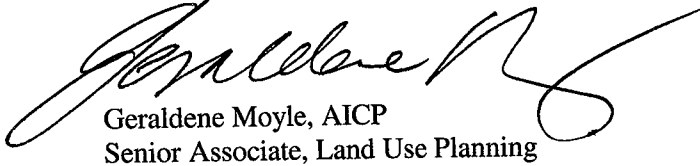
Impact Study – The impact study and ESEE analysis considered nine alternative alignments for Wall Street and evaluated the elements required by the City code. See Exhibit 6 and 7.

Traffic Analysis and Impacts – The DKS traffic study was reviewed and found acceptable by the City of Tigard Engineering Department.

Fire Truck Access – As shown on the plans, fire truck access to the Library and to the Fanno Pointe Condominiums will be via Wall St; direct access from Hall Blvd to either development will be removed. The Wall Street fire access has been reviewed by the City's Fire Marshall and has been found to meet access standards and be acceptable to the City.

The above information addresses the items raised in the letters. If you have any questions or concerns, or need additional information, please call me at 503-224-9560.

Sincerely,



Geraldene Moyle, AICP
Senior Associate, Land Use Planning

/wp

c: Vannie Ngyuen – City of Tigard
Marline DeHaas – DeHaas Engineering
Stacy Benjamin – SWCA